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PART I

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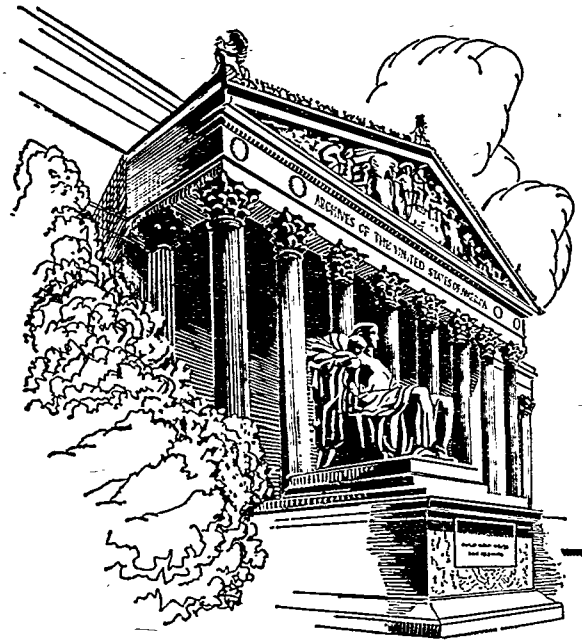

Volume 80

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89th Congress, 2d Session
1966

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Rules and Regulations

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

The penultimate sentence of paragraph (c) *Section 212(e)* of § 212.7 *Waiver of certain grounds of excludability* is amended to read as follows: "The applicant and his spouse may be interviewed by an immigration officer in connection with the application."

PART 214—NONIMMIGRANT CLASSES

Paragraph (k) is added to § 214.3 to read as follows:

§ 214.3 Petitions for approval of schools.

* * * * *

(k) *Issuance of certificates of eligibility.* Upon acceptance of a student as defined in section 101(a)(15)(F) of the Act for a full course of study at a school which has been approved for attendance by such students, the school shall issue Form I–20, Certificate of Eligibility, to the student. The Form I–20 issued by an approved school system shall designate the particular school within that system which the student will attend.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

The listing of transportation lines in paragraph (b) *Signatory lines* of § 238.3 *Aliens in immediate and continuous transit* is amended by adding the transportation line "Aerovias Condor de Colombia Ltda." in alphabetical sequence.

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

Section 316a.2 *American institutions of research* is amended by deleting from the listing "Free Europe Committee, Inc. (formerly National Committee for a Free Europe (including Radio Free Europe))" and inserting in lieu thereof "Free Europe, Inc. (formerly Free Europe Committee, Inc.; National Committee for a Free Europe (including Radio Free Europe))."

PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS

1. Existing § 319.3 *Public international organizations in which the U.S. participates by treaty or statute* is redesignated as § 319.4 and new § 319.3 is inserted to read as follows:

§ 319.3 Persons continuously employed abroad for 5 years by U.S. organizations engaged in disseminating information.

A person of the class described in section 319(c) of the Act shall establish that, at the time of filing of the petition for naturalization, he is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

2. Section 319.5 is added to read as follows:

§ 319.5 United States nonprofit organizations engaged abroad in disseminating information which significantly promotes U.S. interests.

The following have been determined to be U.S. incorporated nonprofit organizations principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes U.S. interests abroad within the purview of section 319(c) of the Act:

Free Europe, Inc.; formerly Free Europe Committee, Inc.; National Committee for a Free Europe (including Radio Free Europe)).

Radio Liberty Committee, Inc. (formerly American Committee for Liberation, Inc.; American Committee for Liberation of the Peoples of Russia, Inc.; American Committee for Liberation from Bolshevism, Inc.).

3. The first sentence of § 319.11 *Procedural requirements* is amended to read as follows: "A person described in §§ 319.1, 319.2, and 319.3 shall submit to the Service an application to file a petition for naturalization on Form N–400 in accordance with the instructions contained therein."

PART 332a—OFFICIAL FORMS

Section 332a.13 is amended by adding paragraph (j) to read as follows:

§ 332a.13 Alteration of forms of petitions or applications for naturalization.

* * * * *

(j) *Benefits of section 319(c) of the Act claimed.* Whenever the benefits of section 319(c) of the Act are claimed, by inserting in allegation (14) the statement "I have been employed continuously for a period of not less than 5 years after a lawful admission for permanent residence, by a U.S. incorporated nonprofit organization recognized by the Attorney General as being principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes U.S. interests abroad and, upon such basis, I claim the benefits of section 319(c), Immigration and Nationality Act." If the person filing the petition is not then employed by the organization, the statement "My employment terminated within 6 months of the filing of my petition." also shall be inserted in allegation (14); or, as an alternative statement, to be inserted if such person then is and will continue to be employed abroad by the organization, "I intend in good faith to resume my residence in the United States immediately upon termination of such employment."

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall be effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 553 of title 5 of the United States Code (Public Law 89–554, 80 Stat. 383), as to notice of proposed rule making and delayed effective date, is unnecessary in this instance because the amendment to § 212.7(c) relieves restrictions; the addition of paragraph (k) to § 214.3 relates to agency procedure; the amendment to § 238.3(b) adds a transportation line to the listing; and the amendments to § 316a.2, Part 319, and § 332a.13 implement Public Law 90–215 (81 Stat. 661) approved December 18, 1967.

Dated: January 3, 1968.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 68–255; Filed, Jan. 8, 1968; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 8435, Amdt. 39–540]

PART 39—AIRWORTHINESS DIRECTIVES

Vickers Viscount Models 744, 745D and 810 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include

an airworthiness directive requiring repetitive inspections for cracking and excessive wear of the aileron control rod tubes in the Vickers Viscount Models 744, 745D, and 810 Series airplanes was published in 32 F.R. 13870.

Interested persons have been afforded an opportunity to participate in the making of the amendment. One comment was received. It suggested that the initial dye penetrant inspection be required within 2,750 hours' time in service after the effective date of this AD, or before the accumulation of 15,250 hours' time in service, whichever comes last, and thereafter at intervals not to exceed 3,000 hours' time in service. These time periods correspond to the maximum possible intervals between such inspections and the AD has been revised to adopt the suggested schedule. The proposal's paragraph (f) referenced paragraph (b) as the control to begin a new cycle of inspections 12,750 hours' time in service after control tube replacement. The AD references paragraph (a) after 12,500 hours' time in service. The change is verbal only and the requirements are the same.

Since this revision to the proposed AD published in 32 F.R. 13870 provides a more flexible inspection schedule, and imposes no additional burden on any person, further notice and public procedure hereon are unnecessary.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

VICKERS. Applies to Viscount Models 744, 745D, and 810 Series airplanes.

Compliance required as indicated unless already accomplished.

(a) For airplanes with 12,500 or more hours' time in service on the effective date of this AD—

(1) Comply with paragraphs (c) and (d) within the next 250 hours' time in service, and thereafter comply with paragraph (c) at intervals not to exceed 500 hours' time in service from the last inspection performed in accordance with either paragraph (c) or (e); and

(2) Comply with paragraph (e) within the next 2,750 hours' time in service, and thereafter at intervals not to exceed 3,000 hours' time in service.

(b) For airplanes with less than 12,500 hours' time in service on the effective date of this AD—

(1) Comply with paragraphs (c) and (d) before the accumulation of 12,750 hours' time in service, and thereafter comply with paragraph (c) at intervals not to exceed 500 hours' time in service from the last inspection performed in accordance with either paragraph (c) or (e); and

(2) Comply with paragraph (e) before the accumulation of 15,250 hours' time in service and thereafter at intervals not to exceed 3,000 hours' time in service.

(c) Visually inspect the full length of the wear pattern made by the three rollers of the guide assembly at wing station 387 on both the left and right aileron control rod tubes, for surface cracks and holes, in accordance with British Aircraft Corp. (BAC) Preliminary Technical Leaflets (PTLs) No. 266 (700 Series) and No. 129 (810 Series), Issue 1, dated May 30, 1967, or later ARB-approved issue, or an FAA-approved equivalent.

(d) Check the roller assembly for correct adjustment between the control rod tube and the third roller, to provide a minimum clearance of 0.005 inches and a maximum clearance of 0.010 inches at the least worn part of the wear pattern, in accordance with BAC PTLs No. 266 (700 Series) and No. 129 (810 Series), Issue 1, dated May 30, 1967, or later ARB-approved issue, or an FAA-approved equivalent.

(e) Remove the aileron control rod tube located at wing station 387, inspect for cracks using dye penetrant, or an FAA-approved equivalent, and measure the outside diameter across all sections of the wear pattern, in accordance with BAC PTLs No. 266 (700 Series) and No. 129 (810 Series), Issue 1, dated May 30, 1967, or later ARB-approved issue, or an FAA-approved equivalent.

(f) If cracks or holes are detected or the tube outside diameter across any section of the wear pattern is less than 1.11 inches in diameter during the inspections required by paragraphs (c) and (e), replace the aileron rod control tube before further flight with a new tube of the same part number. When 12,500 hours' time in service have accumulated on the new replacement tube, begin inspecting the tube in accordance with the inspection requirements of paragraph (a).

(g) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for such operator.

This amendment becomes effective February 8, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on December 28, 1967.

EDWARD C. HODSON,
Acting Director,
Flight Standards Service.

[F.R. Doc. 68-250; Filed, Jan. 8, 1968; 8:46 a.m.]

[Docket No. 67-EA-139, Amdt. 39-534]

PART 39—AIRWORTHINESS DIRECTIVES

Found Brothers Aviation Ltd. Aircraft

On page 14776 of the FEDERAL REGISTER for October 25, 1967, the Federal Aviation Administration published a proposed airworthiness directive which would require repetitive inspections of the wing root ribs and replacement of the wing to fuselage forward attachment bolt on Found Brothers FBA-2C airplanes.

Interested parties were given thirty (30) days in which to submit written data or views. No objections to the proposed rule were received.

In view of the foregoing, the proposed regulations are hereby adopted effective 0001 e.s.t., January 9, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423)

Issued in Jamaica, N.Y., on December 28, 1967.

GEORGE M. GARY,
Director, Eastern Region.

Amend § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue a new airworthiness directive described as follows:

FOUND BROTHERS AVIATION LTD. Applies to FBA-2C aircraft.

Compliance required as indicated.

To preclude the failure of the forward wing to fuselage attachment either by the failure of the attachment bolt or by the cracking of the wing root rib web around the attachment fitting, accomplish the following:

(a) Replace the wing to fuselage forward attachment NAS 145 bolt with an unused bolt of the same part number or an equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, within the next 150 hours' time in service after the effective date of this AD, unless already accomplished within the last 350 hours' time in service, and thereafter at intervals not to exceed 500 hours' time in service from the last replacement.

(b) Within the next 150 hours' time in service after the effective date of this AD, unless already accomplished within the last 100 hours' time in service, and thereafter at intervals not to exceed 250 hours' time in service from the last inspection, visually inspect for cracks the wing root ribs repaired in accordance with either Found Brothers repair 2C39-18, Issue 2, or 2C39-19, Issue 2, or equivalent repair approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(c) Upon request with substantiating data submitted through an FAA maintenance inspector, the compliance times specified in this AD may be increased by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

[F.R. Doc. 68-340; Filed, Jan. 8, 1968; 8:52 a.m.]

[Docket No. 67-EA-144, Amdt. 39-535]

PART 39—AIRWORTHINESS DIRECTIVES

Fairchild Hiller Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to require inspection and rewiring the flap drive circuit on Fairchild Hiller F-27 and F-227 airplanes.

There have been reported instances where the flaps on F-27 and F-227 aircraft have been driven off the end of the drive screw jacks as a result of welded contacts in the Hartmann Controller P/N 815 AS. The flaps as a result, retracted under air loads.

Since this condition is likely to exist or develop in other airplanes of the same type an airworthiness directive is being issued to require inspection and rewiring of the flap drive circuits.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89, 31 F.R. 13697, § 39.13 of Part 30 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

FAIRCHILD HILLER. Applies to F-27 airplanes, Serial Nos. 1 through 124 inclusive and FH-227 airplanes Serial Nos. 501 to 555 inclusive, 557 to 561 inclusive, 564 to 566 inclusive, incorporating Hartman MC815 series motor controller.

Compliance required as follows:

To prevent hazards associated with flap drive system failure whereby the flaps are driven off the drive screwjacks, accomplish the following:

(a) Within the next 200 hours' time in service after the effective date of this AD, and thereafter at 200-hour intervals from the date of the last inspection, inspect flap system motor controller in accordance with Fairchild Hiller Corp. Alert Service Bulletin F27-27-55A dated September 7, 1967, or FAA-approved equivalent. This inspection may be terminated upon completion of the requirement of paragraph (b) of this AD.

(b) Within the next 500 hours' time in service after the effective date of the AD, unless already accomplished, rewire the flap drive circuit in accordance with Fairchild Hiller F-27 Service Bulletin 27-56 Revision 1 dated October 26, 1967, for F-27 aircraft and Fairchild Hiller FH-227 Service Bulletin 27-13 Revision 1 dated October 26, 1967, for FH-227 aircraft or later revisions approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, or perform an equivalent modification approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(c) Upon request with substantiating data submitted through an FAA Maintenance Inspector, compliance time may be increased by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

This amendment becomes effective January 9, 1968.

(Secs. 313(a), 601, 602, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423)

Issued in Jamaica, N.Y., on December 28, 1967.

GEORGE M. GARY,
Director, Eastern Region.

[F.R. Doc. 68-341; Filed, Jan. 8, 1968; 8:52 a.m.]

[Docket No. 67-EA-143, Amdt. 39-536]

PART 39—AIRWORTHINESS DIRECTIVES

General Electric Aircraft Engines

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to revise AD 67-1-2 as it applies to General Electric CT58 aircraft engines.

AD 67-1-2, Amendment 39-332, required the removal of first stage compressor rotor discs within a certain cycle life. Due to subsequent service experience the Administrator has determined that cracks are still appearing in the discs at a lower cycle life. This amendment will, therefore, lower the cycle life and include an alternate hour life.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89, 39 F.R. 13697, § 39.13 of Part 39 of the Federal Aviation Regulations is amended as follows:

1. Revise AD 67-1-2 to read as follows:

GENERAL ELECTRIC Type CT58-100-1, CT58-100-2, CT58-110-1, and T58-GE-1 Engines.

Compliance required as indicated.

To ensure adequate life limit margin for first stage compressor rotor discs, remove from service G.E. P/N's 37D400218P101, 37D400218P101 CEB No. 148, 37D400359P101 and 37D400359P102 as follows:

(a) Discs with more than 10,800 cycles or 2,850 hours on the effective date of this AD, prior to the accumulation of 200 additional cycles or within the next 50 hours whichever occurs first.

(b) Discs with 10,800 cycles or less or 2,850 hours or less on the effective date of this AD, before 11,000 cycles or 2,900 hours whichever occurs first.

For the purposes of this AD a cycle is considered as any engine operating sequence involving engine start, at least one acceleration to a power required for take off, and shutdown.

This amendment is effective January 9, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423)

Issued in Jamaica, N.Y., on December 28, 1967.

GEORGE M. GARY,
Director, Eastern Region.

[F.R. Doc. 68-342; Filed, Jan. 8, 1968; 8:52 a.m.]

[Docket No. 67-EA-129, Amdt. 39-537]

PART 39—AIRWORTHINESS DIRECTIVES

Canadair Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to delete AD 65-11-2 (Amdt. 39-65) and substitute therefor a similar but less restrictive directive applicable to Canadair CL-44D4 type airplanes.

Airworthiness Directive 65-11-2, Amdt. 39-65, as amended effective November 1, 1965, required repetitive inspections of the main landing gear bogie beams of CL-44 airplanes for cracks and replacement where necessary. The Canadian Department of Transportation has indicated that due to service experience the dye penetrant inspection may be relaxed for beams modified in accordance with Canadair Service Bulletin CL 44D4-398. Therefor AD 65-11-2 is being superseded and therefor revoked by a new airworthiness directive which references Canadair Information Circular No. 341 of April 21, 1967, and an increased inspection interval for certain bogie beams.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89, 31 F.R. 13697, § 39.13 of Part 39 of the Federal Aviation Regulations is amended as follows:

CANADAIR. Applies to CL-44D4 Type Airplanes.

To detect cracks in the main landing gear borgie beam, P/N 44-87574, accomplish the following after the effective date of this AD as indicated.

(a) Inspect the left and right main landing gear bogie beam for cracks in accordance with the "Inspection Procedure" outlined in Canadair Service Information Circular (SIC) No. 341, Issue No. 4, dated April 21, 1967, or later FAA-approved revision, or FAA-approved equivalent method. Disregard the term, "after receipt of this Special Inspection" where mentioned in the subject Canadair SIC. Prior to each inspection, remove foreign matter from the area to be inspected.

(b) Replace cracked parts before further flight with a part of the same part number or an FAA-approved equivalent part. Inspect replacement parts in accordance with subparagraphs 1.3.2 and 1.3.3 or 2.3.1 and 2.4.2 as applicable of the subject Canadair SIC prior to installation, or FAA-approved equivalent inspection. All repetitive inspections required by this AD also apply to replacement parts.

(c) Equivalent inspections may be approved by an FAA maintenance inspector. Equivalent parts and SIC revisions must be approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(d) Upon request with substantiating data submitted through an FAA maintenance inspector, the compliance times specified in this AD may be increased by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

This supersedes AD 65-11-2, Amdt. 39-65 as revised November 6, 1965.

This amendment is effective January 9, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Jamaica, N.Y., on December 28, 1967.

GEORGE M. GARY,
Director, Eastern Region.

[F.R. Doc. 68-343; Filed, Jan. 8, 1968; 8:52 a.m.]

[Docket No. 8616, Amdt. 47-6]

PART 47—AIRCRAFT REGISTRATION

Temporary Authority To Operate Extension of Validity Period

Correction

In F.R. Doc. 68-13 appearing at page 11 of the issue for Wednesday, January 3, 1968, the first sentence of the second paragraph is corrected to read as follows: "After an applicant submits an Application for Aircraft Registration under § 47.31(a), § 47.31(b) requires him to carry the second duplicate copy (pink) in the aircraft as temporary authority to operate it without registration.".

[Docket No. 8629, Amdt. 151-21]

PART 151—FEDERAL AID TO AIRPORTS

Runway Clear Zones

The purpose of this amendment to Part 151 of the Federal Aviation Regulations is to amend § 151.9(b) to reflect the pertinent portion of the description of a runway clear zone formerly prescribed in § 77.19(c).

Section 151.9(b) describes a runway clear zone as the innermost part of the runway approach area, and states that the standard configuration and length of each runway clear zone is prescribed in § 77.19(c). Amendment 77-4 deleted that provision from § 77.19(c), but the cross-reference remained in § 151.9(b). Accordingly, the FAA is substituting the pertinent portion of the provision formerly in § 77.19(c) for present § 151.9(b).

Since this amendment relates to public grants, benefits, and contracts, it is excepted from the procedural and effective date provisions of section 553 of Title 5, United States Code, and makes no substantive change. Therefore, it may be made effective immediately.

In consideration of the foregoing, effective January 9, 1968, Part 151 of the Federal Aviation Regulations is amended by amending § 151.9(b) to read as follows:

§ 151.9 Runway clear zones: general.

* * * * *

(b) For the purpose of this part, a runway clear zone is an area at ground level which begins at the end of each primary surface defined in § 77.27(a) and extends with the width of each approach surface defined in § 77.27 (b) and (c), to terminate directly below each approach surface slope at the point, or points, where the slope reaches a height of 50 feet above the elevation of the runway or 50 feet above the terrain at the outer extremity of the clear zone, whichever distance is shorter.

* * * * *

(Secs. 1-15, 17-21, Federal Airport Act; 49 U.S.C. 1101-1114, 1116-1120)

Issued in Washington, D.C., on January 2, 1968.

WILLIAM F. MCKEE,
Administrator.

[F.R. Doc. 68-251; Filed, Jan. 8, 1968; 8:47 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. C-77]

PART 13—PROHIBITED TRADE PRACTICES

Swiss Laboratory Inc., and Leon W. Diamond

Subpart—Advertising falsely or misleadingly: § 13.30 *Composition of goods;* § 13.170 *Qualities or properties of product or service;* § 13.170-58 Nonirritating; § 13.195 *Safety:* § 13.195-60 Product. Subpart—Misbranding or Mislabeling: § 13.1290 *Qualities or properties.* Subpart—Misrepresenting oneself and goods—Goods: § 13.1710 Qualities or properties. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1890 *Safety.* Subpart—Using misleading name—Goods: § 13.2325 Qualities or properties.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Modified order to cease and desist, Swiss Laboratory Inc., et al., Cleveland, Ohio, Docket C-77, Dec. 13, 1967]

In the Matter of Swiss Laboratory Inc., a Corporation, and Leon W. Diamond, Individually and as an Officer of Said Corporation

Order modifying, to conform with the Guides Against Deceptive Labeling and Advertising of Adhesive Compositions, adopted June 30, 1965, the Commission's cease and desist order, 27 F.R. 6384, issued February 14, 1962.

The modified order to cease and desist, is as follows:

It is ordered, That paragraph 2 of the cease and desist order of February 14, 1962, be, and it hereby is, modified to read as follows:

2. Using the word "solder" to describe any product which does not form a metallic seal or bond: *Provided, however,* That nothing herein contained shall prohibit the use of the word "solder" in describing such a product if it is clearly disclosed in conjunction therewith that the product is nonmetallic; or otherwise misrepresenting the composition of the product.

Issued: December 13, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-246; Filed, Jan. 8, 1968; 8:46 a.m.]

[Docket No. C-1277]

PART 13—PROHIBITED TRADE PRACTICES

Noga Waste Co., Inc., et al.

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely;* § 13.1108-80 Textile Fiber Products Identification Act. Subpart—Misbranding or mislabeling: § 13.1170 *Advertising and promotion;* § 13.1185 *Composition:* § 13.1185-80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements:* § 13.1212-80 Textile Fiber Products Identification Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* § 13.1852-70 Textile Fiber Products Identification Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 72 Stat. 1717; 15 U.S.C. 45, 70) [Cease and desist order, North Georgia Waste Co. trading as Noga Waste Co., Inc., et al., LaFayette, Ga., Docket C-1277, Dec. 13, 1967]

In the Matter of North Georgia Waste Co., Inc., a Corporation, Trading Under Its Own Name and as Noga Waste Co., Inc., and William M. Parnell and Dewey W. Hammond, Individually and as Officers of Said Corporation

Consent order requiring a LaFayette, Ga., fabrics manufacturer to cease misbranding its textile fiber products and failing to maintain required records.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents North Georgia Waste Co., Inc., a corporation, trading under its own name or as Noga Waste Co., Inc., or any other name or names, and its officers, and William M. Parnell and Dewey W. Hammond, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible, and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondents, as required by section 6 of the Textile Fiber Products Identification Act and Rule 39 of the regulations promulgated thereunder.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: December 13, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-245; Filed, Jan. 8, 1968; 8:46 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release Nos. 33-4889, 34-8209, 39-242, A.D. 1]

PART 287—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 11(a) OF THE ASIAN DEVELOPMENT BANK ACT

The Securities and Exchange Commission today adopted rules and regulations specifying the periodic and other reports to be filed with it by the Asian Development Bank. This action is taken pursuant to section 11(a) of the Asian Development Bank Act.

Section 11 of the above-mentioned Act exempts from registration under both the Securities Act of 1933 and the Securities Exchange Act of 1934 securities issued in connection with the raising of funds for inclusion in the Bank's ordinary capital resources and securities guaranteed as to both principal and interest by the Bank. However, the Bank is required to file with the Commission such annual and other reports with respect to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors. It would appear that an exemption is available under the Trust Indenture Act of 1939.

The new rules and regulations adopted today require the Bank to file with the Commission substantially the same information, documents, and reports as would be required if the Bank had securities registered under the Securities Exchange Act of 1934. The Bank is also required to file a report with the Commission not less than 7 days prior to the date on which any of its primary obligations are sold to the public in the United States, or such shorter period as the Commission may authorize. This report and the periodic reports to be filed will make available at the Commission information quite similar to the information which would be required in a registration statement under the Securities Act of 1933.

The Commission is informed by the Bank that no public offering of securities guaranteed by the Bank is presently contemplated. Accordingly, the new rules, insofar as they require the reporting of the proposed public sale of securities, are limited to the sale of primary obligations of the Bank. Rules with respect to reporting the proposed sale of securities guaranteed by the Bank will be adopted by the Commission when the need therefor arises.

The new regulation, which is designated Part 287 of Title 17 of the Code of Federal Regulations (Regulation AD), is adopted pursuant to section 11(a) of the Asian Development Bank Act, the Commission finding such action appropriate in view of the special character of the Asian Development Bank and its operations and necessary in the public interest and for the protection of investors.

Commission action. Part 287 of Title 17 of the Code of Federal Regulations is adopted to read as follows:

Sec.

AUTHORITY: The provisions of this Part 287 are issued under section 11(a), 80 Stat. 73, and 22 USC 285(h).

§ 287.1 Applicability of this part.

This part (Regulation AD) prescribes the reports to be filed with the Securities and Exchange Commission by the Asian Development Bank pursuant to section 11(a) of the Asian Development Bank Act.

§ 287.2 Periodic reports.

(a) Within 60 days after the end of each of its fiscal quarters, the Bank shall file with the Commission the following information:

(1) Information as to any purchases or sales by the Bank of its primary obligations during such quarter.

(2) Copies of the Bank's regular quarterly financial statement.

(3) Copies of any material modifications or amendments during such quarter of any exhibits (other than (i) constituent documents defining the rights of holders of securities of other issuers guaranteed by the Bank, and (ii) loans and guaranty agreements to which the Bank is a party) previously filed with the Commission under any statute.

(b) Copies of each annual report of the Bank to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

§ 287.3 Reports with respect to proposed distribution of primary obligations.

The Bank shall file with the Commission, not less than seven days prior to the date on which it proposes to sell any of its primary obligations in connection with a distribution of such obligations in the United States, or such shorter period as the Commission may authorize, a report containing the information and documents specified in Schedule A (17 CFR 287.101) below. The term "sell" as used in this rule and in Schedule A means the making of a completed sale or a firm commitment to sell.

§ 287.4 Preparation and filing of reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the Bank by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to Rule 3 (17 CFR 287.3) may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A (17 CFR 287.101).

§ 287.101 Schedule A. Information required in reports pursuant to § 287.3.

This schedule specifies the information and documents to be furnished in a report pursuant to Rule 3 (17 CFR 287.3) with respect to a proposed distribution of primary obligations of the Bank. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1. Description of obligations.

As to each issue of primary obligations of the Bank which is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of (1) any redemption provisions and (2) any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the Bank will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the Bank will, as to the payment of interest or principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the Bank with respect thereto.

(i) The name and address of the fiscal or paying agent of the Bank, if any.

Item 2. Distribution of obligations.

(a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the Bank or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the Bank or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3. Distribution spread.

The following information shall be given, in substantially the tabular form indicated, as to all obligations which are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts and commissions	Proceeds to the bank
Per unit			
Total			

Item 4. Discounts and commissions to subunderwriters and dealers.

State briefly the discounts and commission to be allowed or paid to dealers. If any dealers are to act in the capacity of subunderwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5. Other expenses of distribution.

Furnish a reasonably itemized statement of all expenses of the Bank in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions.

Instruction. Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6. Application of proceeds.

Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the Bank from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7. Exhibits to be furnished.

The following documents shall be attached to or otherwise furnished as a part of the report:

(a) Copies of the constituent instruments defining the rights evidenced by the obligations.

(b) Copies of an opinion of counsel, in the English language, as to the legality of the obligations.

(c) Copies of all material contracts pertaining to the issuance or distributions of the obligations, to which the Bank or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Copies of any prospectus or other sales literature to be provided by the Bank or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

Effective date. Because of the limited applicability of Regulation AD (17 CFR 287), on which the views and comments of the Bank have been received and considered, the Commission finds that notice and procedure pursuant to the Administrative Procedure Act are unnecessary.

The foregoing action of the Commission shall become effective upon publication, December 18, 1967.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

DECEMBER 18, 1967.

[F.R. Doc. 68-301; Filed, Jan. 8, 1968; 8:51 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Diuron

A petition (PP 8F0626) was filed with the Food and Drug Administration by E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. 19898, proposing the establishment of a tolerance of 7 parts per million for residues of the herbicide diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea) in or on the raw agricultural commodity Bermudagrass.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purpose for which the tolerance is being established.

Based on consideration given the data submitted in the petition, and other relevant material, the Commissioner of Food and Drugs concludes that the tolerance established by this order will protect the public health. Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated by him to the Commissioner (21 CFR 2.120), § 120.106 is amended to establish the subject tolerance by revising the second and third paragraphs to read as follows:

§ 120.106 Diuron; tolerances for residues.

* * * * *

7 parts per million in or on asparagus, Bermudagrass, and Bermudagrass hay.

2 parts per million in or on alfalfa; corn fodder, or forage (including sweet corn, field corn, and popcorn); grass corps (other than Bermudagrass); grass hay (other than Bermudagrass hay); hay, forage, and straw of barley, oats, rye, and wheat; hay, and forage or birdsfoot trefoil, clover, peas, and vetch; sorghum fodder, and forage.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: December 29, 1967.

R. E. DUGGAN, *Acting Associate Commissioner for Compliance.*

[F.R. Doc. 68-282; Filed, Jan. 8, 1968; 8:49 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

ETHYL 4,4'-DICHLOROBENZILATE

A petition (PP 7F0615) was filed with the Food and Drug Administration by the Geigy Chemical Corp., Ardsley, N.Y. 10502, proposing the establishment of tolerances for residues of the insecticide ethyl 4,4'-dichlorobenzilate in or on raw agricultural commodities as follows: Almond hulls at 15 parts per million; whole almonds (meat plus shell) at 5 parts per million (of which not more than 1 part per million shall be in or on the nut meats when shell is removed); and meat, fat, and meat byproducts of cattle and sheep at 0.5 part per million.

Subsequently, the petitioner changed the proposal for a tolerance on whole almonds from that described above to a tolerance of 0.25 part per million in or on almond meats with shell removed.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerances are being established.

Based on consideration given the data submitted in the petition, and other relevant material, the Commissioner of Food and Drugs concludes that the tolerances established by this order will protect the public health. Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; U.S.C. 346a(d)(2)) and delegated by him to the Commissioner (21 CFR 2.120), § 120.109 is revised to read as follows to establish the subject tolerances:

§ 120.109 Ethyl 4,4'-dichlorobenzilate; tolerances for residues.

Tolerances for residues of the insecticide ethyl 4,4'-dichlorobenzilate (Chlorobenzilate) are established in or on raw agricultural commodities as follows:

15 parts per million in or on almond hulls.

5 parts per million in or on apples, citrus fruits, melons, pears.

0.5 part per million in meat, fat, and meat byproducts of cattle and sheep.

0.25 part per million in or on almonds.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department

of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; U.S.C. 346a (d)(2))

Dated: December 28, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-260; Filed, Jan. 8, 1968; 8:47 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Paraquat

A petition (PP 7F0592) was filed with the Food and Drug Administration by the Chevron Chemical Co., Ortho Division, 940 Hensley Street, Richmond, Calif. 94801, proposing the establishment of tolerances for residues from herbicide use of paraquat (1,1'-dimethyl-4,4'-bipyridinium) derived from application of either the bis(methyl sulfate) or the dichloride salt, calculated in both instances as the cation, in or on various raw agricultural commodities. Subsequently, the petitioner amended the petition by withdrawing the proposed tolerance for pecans; by reducing the proposed tolerance for apples, apricots, bananas, citrus, figs, grapes, olives, peaches, pears, and plums (fresh prunes) from 0.5 to 0.05 part per million; and by proposing a tolerance for filberts, nectarines, and soybean forage at 0.05 part per million.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerances are being established.

Based on consideration given the data submitted in the petition, and other relevant material, the Commissioner of Food and Drugs concludes that the tolerances established by this order will protect the public health. Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated by him to the Commissioner (21 CFR 2.120), § 120.205 (32 F.R. 12473) is revised to read as follows to establish the subject tolerances (the tolerances set forth below are established by this order except for cottonseed and potatoes for which tolerances were established by prior orders):

§ 120.205 Paraquat; tolerances for residues.

Tolerances are established for residues of the desiccant, defoliant, and herbicide paraquat (1,1'-dimethyl-4,4'-bipyridinium) derived from application of either the bis(methyl sulfate) or the dichloride salt, calculated in both instances as the cation, in or on raw agricultural commodities as follows:

0.5 part per million (negligible residue) in or on almond hulls, cottonseed, potatoes, sugar beets, sugar beet tops.

0.05 part per million in or on almonds, apples, apricots, avocados, bananas, cherries, citrus, coffee beans, corn (fresh vegetable), corn fodder and forage, corn grain, figs, filberts, grapes, lettuce, macadamia nuts, melons, nectarines, olives, papaya, peaches, pears, peppers, plums (fresh prunes), sorghum forage, sorghum grain, soybeans, soybean forage, tomatoes, walnuts.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a (d)(2))

Dated: December 28, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-261; Filed, Jan. 8, 1968; 8:47 a.m.]

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

NITRODAN; REVOCATION

No comments were received in response to the notice published in the FEDERAL REGISTER of October 24, 1967 (32 F.R. 14697), proposing that the food additive regulation (§ 121.288) providing for use of nitrodan as an anthelmintic in cereal-type dog food be revoked for the reason given in said notice. The Commissioner of Food and Drugs concludes that the regulation should be revoked as proposed.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120), Part 121 is amended by revoking § 121.288 *Nitrodan (3-methyl-5-[(p-nitrophenyl) azo]-rhodanine).*

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d))

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-279; Filed, Jan. 8, 1968; 8:49 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

VINYLIDENE CHLORIDE COPOLYMER COATINGS FOR NYLON FILM

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 8B2228) filed by Morton Chemical Co., Division of Morton International, Inc., 110 North Wacker Drive, Chicago, Ill. 60606, and other relevant material, has concluded that the food additive regulations should be amended to provide for additional uses of vinylidene chloride copolymers containing methacrylic acid and methyl acrylate when such copolymers are used as food-contact coatings on nylon film.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120), § 121.2599 *Vinylidene chloride copolymer coatings for nylon film* is amended by deleting from paragraph (b) the sentence "Finished

vinylidene chloride copolymer coatings containing polymer units derived from methyl acrylate and/or methacrylic acid are limited to use in contact with non-alcoholic foods having a pH above 5.0."

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-281; Filed, Jan. 8, 1968; 8:49 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

RUBBER ARTICLES INTENDED FOR REPEATED USE

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 5B1794) filed by E. I. du Pont de Nemours & Co. Inc., 1007 Market Street, Wilmington, Del. 19898, and other relevant material, has concluded that the food additive regulations should be amended to provide for the use of additional optional substances (identified below) in the formulation of rubber articles intended for repeated food-contact use.

As originally filed, the petition also proposed similar use of a urethane polymer elastomer and 4,4'-methylenebis (2-chloroaniline); however, the petitioner subsequently withdrew that part of the petition.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120), § 121.2562 (c)(4) is amended:

1. By alphabetically inserting three new items in the list under subdivision (i);

2. By adding to subdivision (ii) (*a*) two new items and by revising subdivision (ii) (*a*) to read as indicated;

3. By revising the heading of subdivision (ii) (*d*) to read as indicated; and

4. By alphabetically inserting one new item in the list under subdivision (ix).

The affected portions read as follows:

§ 121.2562 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) *Elastomers.*

* * * * *

Ethylene-propylene-1,4-hexadiene copolymers containing no more than 6 weight percent of total polymer units derived from 1,4-hexadiene.

* * * * *

Vinylidene fluoride-hexafluoropropylene copolymers (minimum number average molecular weight 70,000 as determined by osmotic pressure in methyl ethyl ketone).

Vinylidene fluoride - hexafluoropropylene-tetrafluoroethylene copolymers (minimum number average molecular weight 100,000 as determined by osmotic pressure in methyl ethyl ketone).

(ii) *Vulcanization materials—(a) Vulcanizing agents.*

* * * * *

4,4'-Bis(aminocyclohexyl) methane carbamate for use only as cross-linking agent in the vulcanization of vinylidene fluoride-hexafluoropropylene copolymer and vinylidene fluoride - hexafluoropropylene - terrafluoroethylene copolymer elastomers identified under subdivision (i) of this subparagraph and limited to use at levels not to exceed 2.4 percent by weight of such copolymers.

* * * * *

Hexamethylenediamine carbamate for use only as cross-linking agent in the vulcanization of vinylidene fluoride-hexafluoropropylene copolymer and vinylidene fluoride-hexafluoropropylenetetrafluoroethylene copolymer elastomers identified under subdivision (i) of this subparagraph and limited to use at levels not to exceed 1.5 percent by weight of such copolymers.

* * * * *

Sulfur, ground.

* * * * *

(d) *Activators (total not to exceed 5 percent by weight of rubber product except magnesium oxide may be used at higher levels).*

* * * * *

(ix) *Miscellaneous (total not to exceed 5 percent by weight of rubber product).*

* * * * *

a-(*p*-Nonylphenyl) - *omega* - hydroxypoly (oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters, barium salt; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 9 moles; for use only as residual polymerization emulsifier at levels not to exceed 0.7 percent by weight of ethylene-propylene-1,4-hexadiene copolymers identified under subdivision (i) of this subparagraph.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time with 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-280; Filed, Jan. 8, 1968; 8:49 a.m.]

SUBCHAPTER C—DRUGS

PART 148m—OLEANDOMYCIN

Triacetyloleandomycin Chewable Tablets

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357), and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), Part 148m is amended to provide for the certification of the subject drug by adding the following new section:

§ 148m.9 Triacetyloleandomycin chewable tablets.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Each triacetyloleandomycin chewable tablet contains an amount of triacetyloleandomycin equivalent to 125 milligrams of oleandomycin with suitable diluents, binders, buffers, colorings, and flavorings. The moisture content is not more than 5 percent. The triacetyloleandomycin used conforms to the standards prescribed by § 148m.2 (a)(1). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The triacetyloleandomycin used in making the batch for potency, toxicity, moisture, pH, residue on ignition, identity, R_f value, acetyl value (only if more than one spot is present in the determination of R_f value), and crystallinity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) Triacetyloleandomycin used in making the batch: 10 packages; nine containing approximately 500 milligrams each and one containing approximately 2 grams.

(*b*) The batch: A minimum of 30 tablets.

(*c*) In case of an initial request for certification, each other ingredient used in making the batch: One package of each containing approximately 5 grams.

(4) *Fees.* $0.75 for each tablet in the sample submitted in accordance with subparagraph (3) (ii) (*b*) of this paragraph; $4 for each container submitted in accordance with subparagraph (3) (ii) (*c*) of this paragraph; $5 for each container submitted in accordance with subparagraph (3) (ii) (*a*) of this paragraph.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 148m.2 (b) (1) (ii) or (iii), except prepare the sample stock solution by placing a representative number of tablets in a glass blending jar with sufficient 80 percent isopropanol to give a sample stock solution of 1,000 micrograms per milliliter. Remove an aliquot of the sample stock solution and make the proper estimated dilutions to the prescribed reference concentration in 0.2*M* potassium phosphate buffer, pH 10.5, if the plate assay is used; or in 1 percent potassium phosphate buffer, pH 6.0, if the turbidimetric assay is used. Its potency is satisfactory if it contains not less than 90 percent nor more than 125 percent of the amount of triacetyloleandomycin that it is represented to contain.

(2) *Moisture.* Proceed as directed in § 141a.5(a) of this chapter.

Data supplied by the manufacturer concerning the safety and efficacy of the subject antibiotic drug have been evaluated. Since the conditions prerequisite to providing for certification of the subject drug have been complied with and since it is in the public interest not to delay in providing for such certification, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: December 28, 1967.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 68-262; Filed, Jan. 8, 1968; 8:47 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 208—FLOOD CONTROL REGULATIONS

Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.

Pursuant to the provisions of section 7 of the Act of Congress approved December 22, 1944 (54 Stat. 890; 33 U.S.C. 709), the following regulations are hereby prescribed to govern the use of the flood control storage above elevation 872 in Lake of the Arbuckles on Rock Creek (tributary of the Washita River), Okla., and the operation of the Arbuckle Dam for flood control purposes.

§ 208.29 Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.

The Bureau of Reclamation, or its designated agent, shall operate the Arbuckle Dam and Lake of the Arbuckles in the interest of flood control as follows:

(a) Flood control storage in Lake of the Arbuckles between elevation 872 (top of conservation pool) and elevation 885.3 (top of flood control pool) initially amounts to 36,400 acre-feet. Whenever the lake level is within this elevation range the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable of the flood damage below the lake. In order to accomplish this purpose, flood control releases shall be limited to amounts, which when combined with local inflows below the dam will not produce flows in excess of bankfull on Rock Creek downstream of the lake and on the Washita River, from the confluence of Rock Creek to Durwood, Okla. Operating stages and corresponding flows are as follows: An 11-foot stage (15,000 c.f.s.) on the U.S.G.S. gage on Rock Creek near Dougherty, Okla., river mile 1; and a 20-foot stage (15,000 c.f.s.) on the U.S.G.S. gage on the Washita River near Durwood, Okla., river mile 63.4.

(b) When the level in Lake of the Arbuckles exceeds elevation 885.3 (top of flood control pool), releases shall be made at the maximum rate possible through the river outlet works and the uncontrolled spillway and continued until the lake level recedes to elevation 885.3 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation or its designated agent in immediate charge of operation of the Arbuckle Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose, showing the lake elevation; the number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway release; municipal pumping rate; tailwater elevation; available evaporation data; and precipitation in inches. Normally, a reading at 8 a.m., noon, 4 p.m., and midnight shall be shown for each day. Whenever the lake level rises to elevation 872 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph and unless otherwise instructed shall report once daily thereafter in that manner until the lake level recedes to elevation 872. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of flood control storage capacity above elevation 872, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operation of the Arbuckle Dam by any available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Arbuckle Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and lake from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 1,880 c.f.s. when the lake level is at 872) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. 6099 as modified by the "as built" drawings).

(h) All elevations stated in this section are at Arbuckle Dam and are referred to the datum in use at that location.

[Regs., December 6, 1967, ENGCW-EY]
(Sec. 7, 54 Stat. 890; 33 U.S.C. 709)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68-238; Filed Jan. 8, 1968; 8:46 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following amendments to this subchapter are issued by direction of the Assistant Secretary of Defense (Installations and Logistics) pursuant to authority contained in Department of Defense Directive No. 4105.30, dated March 11, 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202.

PART 1—GENERAL PROVISIONS

1. Sections 1.113–1, 1.113–2, and the introductory text of § 1.115(a) are revised; §§ 1.323, 1.324–1, 1.324–2, 1.324–3 1.324–4, 1.324–5, and 1.324–6 are revised; and new §§ 1.324–7, 1.324–8, 1.324–9, and 1.324–10 are added, as follows:

§ 1.113–1 Government personnel.

All governmental personnel engaged in procurement and related activities shall conduct business dealing with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof. See AR 600–50 (Part 579 of this title), for the Army; SECNAV Instr. 5370.2D of June 29, 1966, for the Navy; AFR 30–30, for the Air Force; and DSAR 5500.1, for the Defense Supply Agency.

§ 1.113–2 Organizational conflicts of interest.

(a) Department of Defense Directive 5500.10, promulgated June 1, 1963, Subject: Rules for the Avoidance of Organizational Conflicts of Interest is set forth in Part 141 of this chapter. The Directive sets out some of the more essential policy considerations of the Department of Defense with respect to relationships with non-Federal institutions. Specifically, the Directive describes examples of various organizational conflicts of interest which might come into being, and rules for avoidance of such conflicts; and it provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of the rules. However, the Directive cannot of itself impose any obligations on the contractor; such obligations must be imposed by a contract clause designed to carry out the intent of the Directive. Furthermore, potential contractors must be advised in the solicitation as to the extent of applicability of the rules, and must be given an opportunity to negotiate on the terms of the clause and its application.

(b)(1) The contracting officer is responsible for applying the rules in the Directive to contracts under his cognizance and shall determine whether each proposed procurement is subject to the Directive.

(2) If the contracting officer initially determines with respect to a particular procurement that a potential conflict of interest exists, he shall, before issuing the solicitation, prepare a written analysis, including a statement as to which of the four rules (or other conflict of interest not stated in the rules) he considers applicable, and a recommended solicitation notice and clause designed to avoid the organizational conflict of interest. A standard form of solicitation notice or clause is not prescribed in this subchapter since such notices and clauses must be especially adapted to apply the principle of the rule to the specific facts of each contractual situation. The clause shall spell out the specific extent of any future restrictions on the contractor. The restrictions of the proposed clause shall also have a specific time period of effectiveness. As a general rule, the time effectiveness of any clause which excludes the contractor from participation in subsequent procurement shall have a fixed term of reasonable duration as appropriate, except that where Rule 1 of the Directive (§ 141.2(b)(1)) is involved the exclusion shall be permanent. A fixed term of reasonable duration is measured by the time required to avoid the circumstance of unfair competitive advantage. This is variable; for example, it may run to the date of award of the first production contract or for a stated period of time. (See Rules 2 and 3 (§ 141.2(b) (2) and (3) of this chapter). In no event shall an exclusion be stated in the clause without a specific date, or an event certain, terminating the effectiveness of the exclusion except where Rule 1 is involved.

(3) After approval by the Head of the Procuring Activity or his designee and before issuance of the solicitation, the contracting officer shall include the determination, together with the written analysis, in the negotiation file or record. The approved solicitation notice and proposed clause shall then be included in the solicitation, together with a clear statement that the proposed clause and the application of the Directive are subject to negotiation.

(4) In no case shall the clause included in a solicitation or in a contract (including letter contracts) pursuant to this section defer the determination of the application of the Directive to a time after the contract has been awarded.

(5) Where a contract contemplates a Rule 4 situation (§ 141.2(b)(4) of this chapter), it is incumbent on the contracting officer to assure himself that the agreement called for by Rule 4 is in fact executed, and that copies thereof are made available to the Government.

(c) The contracting officer shall not impose restrictions under the Directive in follow-on procurements on any prospective contractor in the absence of a specific contractual agreement with that contractor. If, during the effective period of any restriction, procurement responsibility for the system or item involved is transferred from the procuring activity which imposed the restriction that activity shall notify the transferee of the restriction and send it a copy of the contract under which it was imposed.

(d) The Departments shall maintain in accordance with Departmental procedures, and for an appropriate period of time as determined by the circumstances, a record of all solicitation notices and of all clauses incorporated in contracts pursuant to this section.

§ 1.115 Noncollusive bids and proposals.

(a) In order to promote full and free competition for Government contracts, the following certification shall be included in all (1) invitations for bids and (2) requests for proposals or quotations (other than for small purchases made in accordance with Subpart F, Part 3 of this chapter; other than for solicitations issued by overseas purchasing offices which will result in contracts performed overseas by foreign suppliers; and other than requests for technical proposals in connection with two-step formal advertising) involving firm fixed-price contracts and fixed-price contracts with escalation. When the solicitation authorizes the submission of oral offers and requires that such offers be confirmed in writing, it shall require that the certification be included with or be expressly incorporated by reference in and thereby made a part of the confirmation.

* * * * *

§ 1.323 Procurement of natural rubber for tires, tubes, tire recapping, and recapping materials.

(a) It is national policy to require contractors to purchase natural rubber from the National Stockpile in connection with:

(1) Defense contracts for aircraft tires, tubes, recapping materials and tire recapping (unless the recapping materials are Government furnished); and defense contracts for aircraft under which the contractor is to furnish tires or tubes;

(2) Army contracts for tires, tubes, recapping materials and tire recapping (unless the recapping materials are Government furnished), produced to military specifications for use on military trucks, trailers and buses; and Army contracts for such vehicles under which the contractor is to furnish tires or tubes.

The Office of Emergency Planning Executive Office of the President, has authorized the General Services Administration to dispose of natural rubber for that purpose.

(b) The following clause shall be inserted in all such contracts.

PURCHASE OF NATURAL RUBBER (JULY 1967)

(a) Except as provided in paragraph (b) below, the Contractor shall purchase from the General Services Administration, either directly or through a dealer or otherwise cause to be purchased, during the life of

this contract _____[1] pounds of crude natural rubber. Each order for rubber placed with the General Services Administration pursuant to this clause shall state that it has been placed in accordance with the provisions of this clause, shall identify this contract by number and the name of the issuing activity and shall be sent to:

Manager, Rubber Project, General Services Administration, Room 6042, GSA Building, 18th and F Streets NW., Washington, D.C. 20025.

Rubber purchased pursuant to this clause may be used in any manner the Contractor desires and need not be earmarked in any way after delivery to the Contractor, nor physically incorporated in the items to be delivered, provided the specifications are met.

(b) To the extent the Contractor places subcontracts for tires, tubes, tire recapping, or recapping materials under this contract, he is not required to purchase rubber from the General Services Administration. However, he agrees to incorporate in any such subcontract the same terms and conditions set forth in this clause including this paragraph (b), specifying approximate quantity of rubber (natural and synthetic) contained in the tires, tubes, tire recapping, or recapping materials to be delivered under the subcontract. The Contractor shall forward one copy of each such subcontract, referencing the prime contract number and the issuing activity, to the General Services Administration at the above address.

(c) Copies or pertinent abstracts of all contracts and contract modifications affecting rubber quantities will be forwarded by the purchasing activity to the General Services Administration at the address specified in the contract clause.

§ 1.324–1 General.

A warranty clause gives the Government a contractual right to assert claims regarding the deficiency of supplies or services furnished, notwithstanding any other contractual provisions pertaining to acceptance by the Government. Such a clause allows the Government additional time after acceptance in which to assert a right to correction of the deficiencies or defects, reperformance, an equitable adjustment in the contract price, or other remedies. This additional period of time may begin at the time of delivery or at the occurrence of a specified event, and may run for a given number of days or months or until occurrence of another specified event. The value of a warranty clause depends upon the circumstances, and its use, terms, and conditions are influenced by many factors (see § 1.324–3(b)). A warranty clause may therefore be tailored to fit the individual procurement or class of procurements.

§ 1.324–2 Policy.

(a) A warranty clause shall be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in § 1.324–3(b).

(b) A warranty clause shall not be included in cost-reimbursement type contracts, since the warranty aspects of the clause "Inspection of Supplies and Correction of Defects" in § 7.203–5 of this chapter are sufficient to protect the interests of the Government.

(c) Any warranty clause included in a contract shall not limit any rights afforded to the Government by the provisions of the Inspection clause relating to latent defects, fraud, and gross mistakes that amount to fraud. Care should be taken to insure that the warranty clause used and any other warranty provisions in the contract (e.g., in the specifications) are consistent, especially where performance specifications are used.

§ 1.324–3 Use of a warranty.

(a) Except for the commercial warranty clauses covered in § 1.324–4 and warranties contained in Federal, military, or construction guide specifications, the decision to use a warranty clause, or to include a warranty provision in a specification other than a Federal, military, or construction guide specification, shall be made by the Head of a Procuring Activity or his designee. This decision may be made either for individual procurements or for classes of procurements.

(b) In deciding whether to use a warranty clause, at least the following factors shall be considered:

(1) Nature of the item and its end use;

(2) Cost of the warranty and degree of price competition as it may affect this cost;

(3) Criticalness of achieving specified performance capabilities and design specifications;

(4) Cost of correction or replacement, either by the contractor or another source, in the absence of a warranty;

(5) Administrative cost and difficulty of enforcing the warranty;

(6) Ability to take advantage of the warranty, as conditioned by storage time, distance of the using agency from the source, or other factors;

(7) Operation of the warranty as a deterrent against furnishing of defective or nonconforming supplies;

(8) The extent to which Government acceptance is to be based upon contractor inspection or quality control;

(9) Whether because of the nature of the items the Government inspection system would not be likely to provide adequate protection without a warranty;

(10) Whether the contractor's present quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective and reliable quality program;

(11) Reliance on "brand-name" integrity.

(12) Whether a warranty is regularly given for a commercial component of a more complex end item;

(13) Criticalness of item for protection of personnel, e.g., for safety in flight;

(14) The stage of development of the item and the state of the art; and

(15) Customary trade practices.

(c)(1) When a decision has been made to use a warranty clause in a supply contract, consideration shall be given to a contractual requirement that the warranted items be marked as such or that notice of the warranty be otherwise furnished with the items, in order to inform those who store, stock, and use the items that they are warranted and to encourage them to advise the contracting officer of any defects. The marking or notice to be required need not state the complete warranty; a short statement that a warranty exists, its duration, and whom to notify if an item is found to be defective will normally be sufficient.

(2) In deciding whether to impose such a requirement, the contracting officer shall take into account:

(i) The feasibility (for the contractor) of so marking the items or otherwise furnishing notice of the warranty with them;

(ii) The cost to the Government of such a requirement in relation to its probable benefit in the enforcement of the warranty.

(3) When the contracting officer is notified of a defect in warranted items, he should ascertain whether the warranty is currently in effect and assure that proper and timely notice of the defect is given to the contractor.

(d) Warranties required by applicable Guide Specifications shall be included in advertised or negotiated construction contracts.

§ 1.324–4 Commercial warranties.

In either formally advertised or negotiated procurements involving a commercial supply or service or construction, the contracting officer may include in the solicitation a warranty clause which is standard or customary in the trade, or one which is substantially similar to and not in excess of a standard or customary trade warranty—provided in either case the contracting officer, after reviewing the factors listed in § 1.324–3(b), decides that inclusion of such a clause is in the best interests of the Government.

§ 1.324–5 Scope of warranty clause (other than commercial warranty clause).

(a) The terms and conditions of a warranty clause vary with the circumstances of the procurement. The clause must state the duration of the warranty. The clause may either provide that the contractor will be liable for defects or nonconformance to contract requirements existing at the time of delivery, or provide that he will be liable for such defects or nonconformance which develop prior to the expiration of a specified period of time or before the occurrence of a specified event.

(b) A warranty clause shall also include a specified period during which notice must be given to the contractor of any defects or nonconformance to contract requirements. The interest of the Government normally will be protected if the notice period starts at the time of delivery, or where services are involved, upon acceptance thereof by the Government. In some cases, however, it

[1] Contracting officer shall insert the approximate quantity of natural and synthetic rubber, other than Government furnished rubber, contained in the tires, tubes, tire recapping, or recapping materials to be delivered under this contract.

may be necessary to start the notice period at a later time. For example, where conformance of supplies cannot be determined satisfactorily until they are used, the period should begin when the items are put to use, or where supplies are procured in lots under sampling procedures and delivered in increments for storage, the period may begin when the supplies are put to use or at the time of the last delivery.

(c) Where the Government specifies the design of the item and its precise measurements, tolerances, materials, tests, or inspection requirements, the contractor's liability for defects or nonconformance should usually be limited to those in existence at the time of delivery.

(d) Where a contract contains performance specifications and design is of minor importance, the contractor's liability may extend to defects or nonconformance to specifications which may arise after delivery of the supplies or acceptance of the services. Where appropriate, however, the warranty should be limited to defects or nonconformance existing at the time of delivery of the supplies or acceptance of the services.

(e) Ordinarily, the remedy provided under a warranty clause to return nonconforming supplies to the contractor for a correction or replacement should satisfy the Government's needs. However, where the supplies are of such nature (e.g., subsistence or drugs) that correction or replacement does not afford adequate remedy to the Government, the clause should provide (1) that the contracting officer may either return the supplies to the contractor; dispose of them in a reasonable manner, or replace with similar supplies, and (2) that the contractor shall be liable for any cost occasioned to the Government thereby.

(f) When it can be foreseen that it will not be practical to return an article for correction or replacement because of the nature of its use or the cost of preparation for its return (e.g., where operating equipment installed in a vessel, aircraft, or tank needs only a correction of adjustment, but to return it would require substantial expense of removal from where it is installed), the clause should provide that the Government may correct or require the contractor to correct the article in place at its location, at the contractor's expense.

(g) Where it is determined that a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item which may need special protection, e.g., installation, components, accessories, parts, subassemblies and preservation, packaging and packing, etc.

§ 1.324–6 Pricing aspects of fixed-price incentive contract warranty provisions.

In fixed-price incentive contracts, consideration should be given to the pricing aspects of the contract as they relate to a warranty. When it is determined to include a warranty clause, the estimated costs for the warranty shall normally be considered in establishing the incentive target price. Prior to the establishment of the total final price, all costs incurred or to be incurred by the contractor in complying with the warranty clause shall be considered when negotiating the final total negotiated cost. After the establishment of the total final price, contractor compliance with the warranty clause shall be at his expense and at no increase in the total final price. Equitable adjustments in the contract price under the warranty clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause.

§ 1.324–7 Example of warranty clause for fixed-price supply contracts.

(a) The following clause is an example which is authorized for insertion in fixed-price type supply contracts in accordance with § 1.324–2 and § 1.324–3.

WARRANTY OF SUPPLIES

(a) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that_____:[1]

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(b) The Contracting Officer shall give written notice to the Contractor of any breach of the warranties in paragraph (a) of this clause_____.[2]

(c) Within a reasonable time after such notice, the Contracting Officer may either:

(i) By written notice require the prompt correction or replacement of any supplies or part thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (a) of this clause; or

(ii) Retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances and the Contractor shall promptly make appropriate repayment.

If the contract provides for inspection of supplies by sampling procedures, the Contracting Officer may, at his option, determine the quantity of supplies or parts thereof which are subject to this paragraph in accordance with such sampling procedures.

[1] State in the blank the specific warranty period, e.g., "at the time of delivery"; "for (insert period of time) after delivery" or the specified event whose occurrence will terminate the warranty period, e.g., the number of miles or hours of use, or combination of any applicable events or periods of time, as appropriate (see § 1.324–5(a)).

[2] Insert in the blank the specific period of time in which notice shall be given to the contractor, e.g., "within (insert period of time) after delivery of the nonconforming supplies"; "within (insert period of time) of the last delivery under this contract", as appropriate (see § 1.324–5(b)).

(d) When return, correction or replacement is required, the Contracting Officer shall return the supplies and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant, and return.

(e) If the Contractor fails or refuses to correct or replace the nonconforming supplies within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure or refusal, the Contracting Officer may, by contract or otherwise, correct or replace them with similar supplies and charge to the Contractor the cost occasioned to the Government thereby. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(f) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.

(g) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(h) The word "supplies" as used herein includes related services.

(i) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(b) When the contractor's design is to be used rather than a Government design, insert the word "design," before "material" in paragraph (a)(i) of the clause in paragraph (a) of this section.

(c) The following paragraph (c) may be substituted for the paragraph (c) of the clause in paragraph (a) of this section when the contract provides for inspection of supplies by sampling procedures:

(c) Conformance of supplies or parts thereof subject to warranty action shall be determined in accordance with the applicable sampling procedures contained in the contract except as provided herein. For sampling purposes, the Contracting Officer may group any supplies delivered under this contract. The size of the sample shall be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection, provided, the supplies remaining are reasonably representative of the quantity on which warranty action is proposed. The original inspection lots need not be reconstituted nor shall the Contracting Officer be required to use the same lot size as on original inspection. Within a reasonable time after notice of any breach of warranties in paragraph (a) of this clause as

determined herein, the Contracting Officer may exercise one or more of the following options:

(i) Requires an equitable adjustment in the contract price for any group of supplies;

(ii) Screen the supplies grouped under this clause at Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement;

(iii) Require the Contractor to screen the supplies at depots designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(iv) Return the supplies grouped under this clause to the Contractor for screening and correction or replacement.

(d) The following paragraph (d) may be substituted for paragraph (d) of the clause in paragraph (a) of this section when it is desirable to provide that necessary transportation incident to correction or replacement will be at the Government's expense. This may be appropriate, for instance, when the cost of a warranty would otherwise be prohibitive.

(d) When correction or replacement is required, and transportation of supplies in connection with such correction or replacement is necessary, transportation charges and responsibility for such supplies while in transit shall be borne by the Government.

(e) The following paragraph (e) may be substituted for paragraph (e) of the clause in paragraph (a) of this section when the supplies cannot be obtained from another source.

(e) If the Contractor does not agree as to his responsibility to correct or replace the supplies delivered, he shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c) to correct or replace the defective or nonconforming supplies. In the event it is later determined that such supplies were not defective or nonconforming within the provisions of this clause, the contract price will be equitably adjusted. Failure to agree to such an equitable adjustment of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The following paragraph should be added when the clause in paragraph (a) of this section is included in a fixed-price incentive contract.

(j) Prior to the establishment of the total final price, all costs incurred, or to be incurred by the Contractor in complying with this clause shall be considered when negotiating the final total negotiated cost under the Incentive Price Revision clause of this contract. After the establishment of the total final price, Contractor compliance with this clause shall be at the Contractor's expense and at no increase in the total final price. Any equitable adjustments made pursuant to paragraph (c) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

§ 1.324–8 Example of warranty clause for fixed-price services contracts.

(a) The following clause is an example which is authorized for insertion in fixed-price type services contracts in accordance with §§ 1.324–2 and 1.324–3.

WARRANTY OF SERVICES

Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will be free from defects in workmanship and will conform to the requirements of this contract at time of acceptance. The Contracting Officer shall give written notice of any such defect or nonconformance to the Contractor _____[1] Such notice shall state either (i) that the Contractor shall correct or reperform any defective or nonconforming services, or (ii) that the Government does not require correction or replacement. If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor pursuant to this clause shall be subject to all provisions of this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby or obtain an equitable adjustment in the contract price. If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price. Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "disputes" clause of this contract.

(b) When the contractor's design is to be used rather than a Government design, insert the words "design and" before "workmanship" in the first sentence of the clause in paragraph (a) of this section.

§ 1.324–9 Another example of warranty clause for fixed-price supply or services or research and development contracts (correction of deficiencies clause).

(a) The following clause is an example which is authorized for insertion (in accordance with §§ 1.324–2 and 1.324–3) in fixed-price type supply and service and research and development contracts for systems and equipment where performance specifications or design are of major importance.

CORRECTION OF DEFICIENCIES

(a) *Definitions.* As used in this clause:

(i) "Deficiency" means any condition or characteristic in any supplies (which term shall include related technical data) or services furnished hereunder, which is not in compliance with the requirements of this contract; and

(ii) "Correction" means any and all actions necessary to eliminate any and all deficiencies.

(b) *General.* (1) The rights and remedies of the Government provided in this clause:

(i) Shall not be affected in any way by any other provisions under this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(2) This clause shall apply only to those deficiencies discovered by either the Government or the Contractor within _____[1]

(3) The Contractor shall not be responsible under this clause for the correction of deficiencies in Government furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.

(4) The Contractor shall not be responsible under this clause for the correction of deficiencies caused by the Government.

(c) *Deficiencies in accepted supplies or services*—(1) Notice to Contractor; His Recommendation for Correction. If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Government under this contract, he shall promptly notify the Contractor of the deficiency, in writing, within _____[2] Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the Contractor shall promptly submit to the Contracting Officer his recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(2) *Direction to Contractor Concerning Correction of Deficiencies.* Within_____[2] after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at _____[3]

(3) *Correction of Deficiencies by Contractor.* The Contractor shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no increase in the contract price. The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(4) *Modification of Contract With Respect to Uncorrected Deficiencies.* In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall promptly submit a technical and cost proposal to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirements, and an equitable reduction in contract price shall promptly be negotiated by the parties and reflected in a supplemental agreement to this contract.

(d) *Deficiencies in Supplies or Services Not Yet Accepted.* If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a deficiency exists in any supplies or services, he shall promptly correct the deficiency or, if he elects to invoke the procedures in (c) above, he shall prompt-

[1] Insert in the blank the specific period of time in which notice shall be given to the contractor, e.g., "within (insert period of time) from the date of acceptance by the Government"; "within (insert number of hours) of use by the Government"; or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or periods of time, as appropriate.

[1] Insert a specific period of time, and specify acceptance or another event from which the time is to be computed, or that the time refers to hours of use.

[2] Insert a specific period of time.

[3] Insert the locations where correction may be directed.

ly communicate information concerning the deficiency to the Contracting Officer in writing, together with his detailed recommendation for corrective action.

(e) *No Extension in Time for Performance; No Increase in Contract Price.* (1) In no event shall the Government be responsible for extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by the Government in a supplemental agreement with adequate consideration.

(2) It is hereby specifically recognized and and agreed by the parties hereto that this clause shall not be construed as obligating the Government to increase the contract price of this contract.

(f) *Transportation Charges.* (1) When the Government returns supplies to the Contractor for correction or replacement pursuant to this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this contract to the Contractor's plant, in addition to any charges provided for by (2) below. The Contractor shall also bear the responsibility for the supplies while in transit.

(2) When compliance with the terms of this clause by the Contractor involves shipment of corrected or replacement supplies from the Contractor to the Government, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the designated destination point under this contract, in addition to any charges provided for by (1) above. The Contractor shall also bear the responsibility for the supplies while in transit.

(g) *Failure To Correct.* If the Contractor fails or refuses to (i) present a detailed recommendation for corrective action in accordance with (c) above, (ii) correct deficiencies in accordance with (c) (3) above, or (iii) prepare and furnish data and reports in accordance with paragraph (e) (3) above, the Contracting Officer shall give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be cured. If the failure or refusal is not cured within the specified period, the Contracting Officer may, by contract or otherwise, as required:

(i) Obtain detailed recommendations for corrective action;

(ii) (A) Correct the supplies or services, or

(B) Replace the supplies or services—and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and

(iii) Obtain applicable data and reports;

and charge to the Contractor the cost occasioned to the Government thereby.

(h) *Correction of Deficient Replacements and Re-performances.* Any supplies or parts thereof corrected or furnished in replacement and any services reperformed pursuant to this clause shall also be subject to all the provisions of the clause to the same extent as supplies or services initially accepted.

(b) Depending on the circumstances of the procurement, one or more of the alternate paragraphs in § 1.324–7 (c), (d), or (e) may be substituted for the appropriate paragraphs in the "Correction of Deficiencies" clause in paragraph (a) of this section. Similarly, the alternate paragraph in § 1.324–7(f) may be added to the clause.

§ 1.324–10 Example of warranty clause for fixed-price construction contracts.

The following clause is an example which is authorized for insertion in fixed-price type construction contracts in accordance with §§ 1.324–2 and 1.324–3.

WARRANTY OF CONSTRUCTION

(a) Except as otherwise expressly provided in this contract, the Contractor shall remedy at his own expense any failure of the work (including equipment) to conform to contract specifications and any defect of material, workmanship, or design in the work—but excluding any defect of any design furnished by the Government under the contract—provided that the Government gives the Contractor notice of any such failure or defect promptly after discovery but not later than one year after final acceptance of the work, except that in the case of defects or failures in a part of the work of which the Government takes possession prior to final acceptance, such notice shall be given not later than one year from the date the Government takes such possession. The Contractor, at his own expense, shall also remedy damage to equipment, the site, or the buildings or the contents thereof which is the result of any failure or defect, and restore any work damaged in fulfilling the terms of this clause. Should the Contractor fail to remedy any such failure or defect within a reasonable time after receipt of notice therof, the Government shall have the right to replace, repair, or otherwise remedy such failure or defect at the Contractor's expense. This warranty shall not delay final acceptance of or final payment for the contract work.

(b) All subcontractors', manufacturers' and suppliers' warranties and guaranties, express or implied, respecting any part of the work and any materials used therein shall be deemed obtained—and shall be enforced—by the Contractor as the agent and for the benefit of the Government without the necessity of separate transfer or assignment thereof, provided that, if directed by the Contracting Officer, the Contractor shall require such subcontractors, manufacturers and suppliers to execute such warranties and guaranties in writing to the Government.

(c) Any work repaired or replaced pursuant to this clause shall also be subject to the provisions of this clause to the same extent as work originally performed. The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

PART 3—PROCUREMENT BY NEGOTIATION

2. In § 3.608–2, paragraphs (b) (1) (x), (2) (ii) (*d*), and (d) (7) are revised to read as follows:

§ 3.608–2 Order for Supplies or Services/Request for Quotations (DD Forms 1155, 1155r, 1155r–1; Standard Form 36; DD Form 1155c–1 and Standard Form 30).

* * * * *

(b) *Conditions for use.* (1) * * *

(x) A commercial warranty clause may be used in accordance with § 1.324–4 of this chapter.

* * * * *

(2) * * *

(ii) * * *

(*d*) A commercial warranty clause may be used in accordance with § 1.324–4 of this chapter.

* * * * *

(d) * * *

(7) The contracting officer's signature on purchase orders shall be in accordance with ASPR procedure. Facsimile signatures may be used in the production of purchase orders by automated methods, provided specific authority for such use is obtained from the Director of Procurement Policy and Review, Office of the Assistant Secretary of the Army (Installations and Logistics) in the Army; Deputy Chief of Naval Material (Procurement and Production) in the Navy; the Director of Procurement Policy, Office of the Deputy Chief of Staff (Systems and Logistics) in the Air Force; and the Executive Director, Procurement and Production, in the Defense Supply Agency.

* * * * *

3. New Subparts J and K are added, as follows:

Subpart J—Contractor's Weighted Average Share in Cost Risk (CWAS)

Subpart K—Acquisition of Automatic Data Processing Equipment

AUTHORITY: The provisions of Subparts J and K issued under sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

Subpart J—Contractor's Weighted Average Share in Cost Risk (CWAS)

§ 3.1000 Scope of subpart.

This subpart sets forth the concepts and objectives which govern the Con-

tractor's Weighted Average Share in Cost Risk (CWAS) technique. It also sets forth detailed procedures for determining the contractor's weighted average share for a given fiscal year as a percentage of costs incurred by type of contract during the contractor's fiscal year.

§ 3.1001 General concept.

(a) For many years, the Department of Defense has borne a major share of the cost risk entailed in the performance of many of its research, development, and production programs because of the prevalence of cost-reimbursement type contracts. In recent years, the burden of risk has been substantially shifting from the Government to defense contractors through refinements in contract techniques and the utilization of more firm fixed-price and incentive contracts, resulting in a continuing reduction in the use of cost-plus-a-fixed-fee type contracts. During the period of high Government risk, many administrative, cost, and audit controls were imposed on industry since the cost-plus-a-fixed-fee form of contract did not provide maximum motivation for prudent cost management on the part of contractors. Now that higher risk contracts are being increasingly used, it is considered desirable and practicable to measure the cost risk motivation imposed on individual contractors as evidenced by the mix of contracts, and whenever practicable to eliminate administrative controls and reasonableness overhead audits on those contractors who attain a verifiable "weighted average share" of risk which meets a prescribed threshold. This concept is based on the premise that good management by industry properly motivated to cost consciousness, can accomplish much more effective control of costs than can detailed review, control, and overhead audit by Government personnel.

(b) The CWAS threshold level is established in applicable parts of this chapter for application to specific administrative controls and overhead costs and in contract audit instructions for application to audit procedures.

§ 3.1002 Objectives.

The objectives of the contractor's weighted average share in cost risk program are:

(a) To furnish a measure of an individual contractor's risk motivation, as provided by types of contracts, to conduct his business prudently and with maximum economy;

(b) To offer additional inducement to a contractor to accept higher risk type contracts;

(c) To minimize the extent of Government control, including controls exercised through Department of Defense prime contracts and subcontracts thereunder, thereby reducing Government costs;

(d) To provide a simple, uniform procedure for determining a contractor's assumption of cost risk that can be applied equitably to all defense contractors who desire to participate by voluntarily submitting pertinent data;

(e) To provide a means for directing audit and other Department of Defense management efforts to those areas where they are most needed because of the greater degree of Government risk; and

(f) To provide a basis for determining that indirect costs incurred during the applicable period by a contractor whose CWAS rating is above a predetermined threshold are reasonable and therefore reimbursable if otherwise allowable and allocable.

A single threshold level will be utilized for as many applications as practicable.

§ 3.1003 Definitions.

§ 3.1003–1 Contractor's weighted average share in cost risk (CWAS).

(a) The contractor's weighted average share in cost risk (CWAS) is a technique for determining and expressing numerically the degree of cost risk a contractor has assumed, based on an analysis of the mix of types of contracts which he has agreed to perform for his customers. This technique recognizes that all contractors do not have the same financial risk in arriving at decisions regarding expenditures of funds in meeting their contractual obligations. As a general rule, this technique recognizes that a contractor who accepts higher risk contracts has a greater financial motivation to exercise prudent business judgment in the performance of such contracts.

(b) A contractor who has only cost-plus-a-fixed-fee (CPFF) Government contracts has a minimal financial risk, because he will be reimbursed for every dollar he spends as long as the expense is allowable and allocable in accordance with Part 15 of this chapter, reasonable in amount, and does not result in an unauthorized overrun of the contract limitation on costs. There is little if any incentive for him to hold expenditures to the minimum. On the other hand, in the case of a firm fixed-price contract, the contractor's financial risk is great because he will receive an exact price for the performance of his contracts regardless of the costs incurred in their performance. He knows that every dollar he spends increases the cost of performance and reduces the amount of his profit. Therefore, there is substantial incentive for him to give thorough consideration to all decisions regarding the expenditure of funds. Between these two extremes is the contractor whose business consists of a mix of contracts including the incentive type which have provisions for the contractor to share, at a predetermined rate, the amount which his costs underrun or overrun a preestablished target. His financial risk is greater than the contractor with only cost-type contracts but not as great as the contractor whose business is all on a firm fixed-price basis.

(c) A contractor's cost risk can be identified by stating it as a percentage of total costs incurred by type of contract during the fiscal year. In paragraph (b) of this section, the contractor with CPFF contracts would have a "zero percent risk," the contractor with competitive firm fixed-price contracts would have a "100 percent risk," and the contractor with a mix of contracts would have a cost risk percentage between these two points. It is improbable that a contractor will have only one type of contract at any given point in time. Contractors normally have a mix of contracts (including contracts with other Government agencies) and they may have commercial work being performed in the same profit center.

(d) In those cases where contractors use a standard cost system of accounting, they may elect to substitute cost of sales in lieu of costs incurred for purposes of CWAS measurement.

(e) Contractors may use sales as the basis for computation of CWAS ratings *provided* (1) substantially the same result would be obtained through the costs incurred method, and (2) the Government authorizes the sales basis, in lieu of the cost incurred basis. In the case of those contractors who have received authorization from the Government to use the sales basis, the term "costs incurred" as applied to the computation of the CWAS rating in other sections of this subpart, will be construed to mean "sales." Use of the sales method is encouraged, where appropriate, in order to permit more timely submission and to reduce the Government's administrative and audit review workload pertaining to approval of CWAS ratings.

§ 3.1003–2 Costs incurred.

(a) For purposes of this subpart, costs incurred consist of the contractor's total cost input for his previous fiscal year identified through the use of the contractor's method of accounting and reporting. Costs incurred represent all costs (whether or not allowable), including costs of direct labor, direct material, subcontracts, and direct services as well as all properly allocated overhead (indirect) costs, except as provided in paragraph (c) of this section.

(b) The contractor's total cost input for the fiscal year will be categorized as either commercial or Government business, with Government business listed by various types of Government contracts. Government competitive firm fixed-price contract and competitive subcontract costs may be combined with commercial contract costs at the option of the contractor. The categorizing of costs will be in accordance with the accounting system and procedures used by the contractor in assigning costs to contracts and commercial business providing, in the case of Government contracts, this system and these procedures are acceptable to the Government for contract cost determination and pricing purposes.

(c) With respect to a contractor's production for stock, i.e., finished goods or finished parts not manufactured against specific commercial or Government orders in hand, the treatment to be accorded the costs incurred shall be determined on a practical case-by-case basis.

Since the concept is aimed at general orders of magnitude, emphasis in arriving at solutions to individual cases should be on practicality rather than precision. For example, if production for stock consists essentially of only standard items to be sold at a fixed or catalog price on the commercial market or to the Government on the same basis in accordance with § 3.807 or § 15.205–22(e) of this chapter, the costs incurred shall be reported in the commercial or fixed-price category. On the other hand, if production for stock involves largely items which are not sold generally on the commercial market as end items (i.e., nonstandard items), but which are incorporated as components under a variety of contracts, the costs incurred shall be excluded until such time as they are chargeable to and can be identified with specific commercial or Government orders. In those situations where production for stock is more evenly composed of standard and nonstandard items and the treatment to be accorded such production will have a significant effect upon the ultimate CWAS rating assigned to the contractor, the mix of standard and nonstandard items should be determined with a fair amount of precision, so that the costs incurred with respect to the standard items can be reported in the commercial or fixed-price category and the costs associated with the nonstandard items can be excluded. Any method developed regarding the treatment to be accorded costs applicable to items produced for stock shall be provided safeguards to prevent duplicate inclusion of such costs.

(d) Costs incurred which are applicable to raw materials not purchased against specific commercial or Government orders in hand will be excluded until such time as they are chargeable to and can be identified with specific commercial or Government orders.

§ 3.1003–3 Profit center.

A profit center is the smallest organizationally independent segment of a company which has been charged by management with profit and loss responsibilities and whose operations must therefore absorb its indirect costs. Generally, a profit center will be a plant or division, but it may consist of larger or smaller organizational segments of the company.

§ 3.1003–4 Threshold.

The percentage designation at which the control or reasonableness test is relaxed or relieved.

§ 3.1003–5 Government contracts.

For the purposes of this subpart, "government contracts" includes only contracts with the U.S. Government.

§ 3.1004 Application of CWAS.

(a) The CWAS technique is applicable to all contractors of the Department of Defense on a voluntary basis. A contractor desiring to participate in this program may do so by determining his own CWAS rating in accordance with the procedures described in § 3.1005 and submitting the requisite costs-incurred data through appropriate channels (see § 3.1006) for verification as required by § 3.1007. Contractors who do not have Department of Defense prime contracts may submit the requisite data to the regional Defense Contract Administration Office, for qualification under this subpart and application of these procedures to their Government subcontract efforts.

(b) The application of CWAS principles may be withdrawn pursuant to a finding by the Administrative Contracting Officer (ACO) of fraud, misrepresentation, or other abuse, but such a withdrawal shall be effective only after a written determination by the Head of a Procuring Activity. Such action may be taken with respect to a profit center or centers or the entire corporation.

(c) Reinstatement of CWAS principles with a contractor may be accomplished only after the contractor has satisfactorily corrected the condition leading to withdrawal. Before a contractor will be reinstated, he must submit a complete statement of corrective actions to the ACO, who shall transmit such statement together with his recommendation to the Head of a Procuring Activity for determination. The contractor shall then reapply for a CWAS rating in accordance with the procedures in paragraph (a) of this section.

(d) The Secretary of the Department having contract management cognizance may deny or revoke the application of the CWAS technique or rating in exceptional cases where, in his judgment, because of the special nature of the contractor's work, competitive position, future or follow-on contracts, known procedures or other unusual circumstances, the contractor's CWAS rating for the percentage factors in § 3.1005(e), do not comparably and consistently reflect the contractor's cost risk, motivation or controls or provide assurance that Government cost audit and controls are not needed in the Government's interest.

(e) The CWAS technique or rating shall not apply to any profit center of a contractor where the total dollar costs incurred for commercial work and Government competitive firm fixed-price contracts are less than 35 percent of the total dollar costs incurred for all business at such profit center.

§ 3.1005 Procedures for determining a contractor's weighted average share in cost risk.

(a) Each contractor may submit the required costs-incurred data from which he has determined his weighted average share in risk. If a company has only one profit center, the data shall be developed on a company-wide basis. If a company has more than one profit center which it desires to qualify for CWAS, it shall develop data on a company-wide basis and for each such profit center. Any change in an accepted basis for computing CWAS ratings must be based on a demonstrable organizational change or on an acceptable change to the accounting structure.

(b) In order to establish an initial CWAS rating, the contractor shall develop costs-incurred data at the close of his fiscal year. This data shall be based on his Government business, broken down by types of contracts, and on his entire commercial business. Government competitive firm fixed-price contract costs may be combined with commercial contract costs at the option of the contractor. Thereafter, to continue in the program, he must submit similar data annually.

(c) For purposes of determining the Government contract mix, the types of contracts to be considered are those authorized in Subpart D of this part. For any other approved type of contract not listed in Subpart D of this part, use the factor or procedure for the most similar type of contract in § 3.1005(e). For purposes of determining contract mix, commercial contracts are assumed to have been obtained in the competitive environment of the free market place, and will be accorded the same treatments as the competitive firm fixed-price contract. Subcontracts, other than competitive firm fixed-price subcontracts, under Government contracts cannot be classed as commercial.

(d) The contractor's weighted average share in cost risk will be determined as follows:

(1) For the fiscal year just ended, determine the total dollar costs incurred for commercial work and Government competitive firm fixed-price contracts and by specific types of contracts for other Government business;

(2) Multiply these costs incurred by the approved percentage factor for the respective contract types; this becomes the contractor's "dollar cost risk"; and

(3) Total the resulting contractor dollar cost risks for the respective types of contracts and divide this result by the total dollar costs incurred.

The resulting percentage is the contractor's weighted average share in cost risks, or CWAS rating.

(e) (1) The percentage factors to be used in determining the contractor's dollar cost risk by type of contract are as follows:

Type of contract	*Percentage factor*
Letter Contracts	0 (see subparagraph (2) of this paragraph).
Time and Material	0.
Labor Hour	0.
Cost Only	0.
Cost Sharing	Share Line.
Cost-Plus-a-Fixed-Fee.	0.
Cost-Plus-Incentive-Fee.	15 percent.
Fixed-Price Incentive (Successive Targets).	55 percent (see subparagraph (3) of this paragraph).
Fixed-Price Incentive (Firm Target).	See subparagraph (4) of this paragraph.
Fixed-Price Redeterminable (Retroactive).	50 percent.
Fixed-Price Redeterminable (Propective).	80 percent.

Type of contract	*Percentage factor*
Fixed-Price With Escalation—Noncompetitive.	80 percent (see subparagraph (6) of this paragraph).
Firm Fixed-Price—Noncompetitive.	80 percent (see subparagraph (6) of this paragraph).
Fixed-Price With Escalation—Competitive.	100 percent.
Firm Fixed-Price—Competitive.	100 percent (see subparagraph (5) of this paragraph).
Commercial	100 percent (see subparagraph (5) of this paragraph).

(2) All costs incurred prior to definitization of a letter contract shall be assigned a zero factor. Costs incurred after definitization shall be assigned the factor applicable to the definitive contract type. Date of definitization may be considered as the end of the month immediately prior to the date of definitization.

(3) The percentage factor 55 will be used for fixed-price incentive (successive targets) contracts up to the point when either a fixed-price incentive (firm target) or firm fixed-price contract is negotiated. From that point on, the contract factor will be determined in accordance with the procedure applicable to the type of contract negotiated.

(4) (i) Percentage factors for fixed-price incentive contracts will be determined by computing ceiling price as a percentage of target cost—target cost being a constant at 100 percent—and applying the factor from the following table:

Ceiling price as percentage of target cost	*Interim factor*
110 percent	75.
115 percent	65.
120 percent	55.
125 percent	40.
130 percent and over	15 (minimum).

(ii) The interim factor for ceilings between those indicated shall be interpolated.

(iii) Add to the interim factor 1 point for each 5 percent of contractor share above target. For multiple contractor share rates, use a weighted average of the share percentages between target cost and ceiling. The result is the contract percentage factor.

(iv) The maximum contract percentage factor is 100; the minimum contract percentage factor is the contractor's share.

(v) Where the Secretary of the Procuring Department has determined that a fixed-price incentive contract has been awarded as a result of price competition, the above factors shall be increased 10 points for application to such contract, or a higher factor may be applied if the Secretary so determines.

(5) Competitive firm fixed-price contract costs and commercial contract costs may be combined at the option of the contractor.

(6) For purposes of this subpart, a noncompetitive firm fixed-price contract is a firm fixed-price contract or subcontract in excess of $1 million, which was awarded on the basis of certified cost or pricing data (see § 3.807–3). All other firm fixed-price contracts are to be considered as competitive.

(f) A simple computation of a contractor's weighted average share in cost risk is set forth below, based on the stated assumptions:

SIMPLIFIED EXAMPLE OF CWAS COMPUTATION

Type of contract	Prior year's costs incurred	Percentage factor	Contractor's dollar risk
Time and material	$50,000	0	$0
CPFF	200,000	0	0
CPIF	300,000	15	45,000
FPI (118% ceiling, 30% share).	200,000	65	130,000
FFP (competitive)	100,000	100	100,000
Commercial	150,000	100	150,000
Total	1,000,000		425,000

$425,000÷$1,000,000=42.5 CWAS rating.

§ 3.1006 Reporting procedure.

(a) A contractor desiring to have an initial CWAS rating approved by the Department of Defense for any one or more of its profit centers shall prepare a report setting forth the requisite detailed cost-incurred data together with the computed CWAS ratings. The original and two copies of this report should be submitted to the cognizant Administrative Contracting Officer (ACO) or, in the case of a contractor who does not have a Department of Defense prime contract, to his local Defense Contract Administration Services Region (DCASR) office, and a copy should be submitted simultaneously to the Defense Contract Audit Agency (DCAA) auditor concerned. In order to maintain an approved CWAS rating after initial approval, the contractor must submit a similar report annually thereafter as soon after the end of the fiscal year as final results of the fiscal year's operations are available, and in no event later than 105 days after the close of the contractor's fiscal year, unless the ACO grants an extension.

(b) A contractor who desires to have his CWAS rating computed on the sales basis, rather than on the costs incurred basis, shall not submit the report described in paragraph (a) of this section based on sales until he has received authorization in writing from the ACO. To obtain such authorization, the contractor shall submit a request to use the sales basis in writing to the ACO with a copy to the DCAA auditor. The request shall be supported by data and rationale which in the contractor's opinion demonstrate that substantially the same results would be achieved under either the costs incurred or sales basis. The ACO, with the advice of the DCAA auditor, will either authorize or disapprove the contractor's request. Once the sales basis has been authorized, the authorization shall remain in effect until such time as circumstances change and in the opinion of the ACO substantially the same results would no longer be achieved.

(c) If a contractor's CWAS rating computed on a sales basis is five or more points in excess of any applicable threshold, and there is no significant variation between annual inventories, the ACO may presume that computation on a cost basis will not result in any meaningful difference, and in such cases the submission of any other data or justification should be waived.

§ 3.1007 Determination and verification.

The ACO is responsible for reaching an agreement with the contractor on CWAS rating and for approving CWAS ratings. Within 30 days after receipt of the contractor's report, the DCAA auditor shall submit a report to the ACO on the validity of the data and the computation techniques, or else he shall advise the ACO as to the reasons for any delay. The ACO will promptly validate the contractor's CWAS or reach an agreement with the contractor on a revised CWAS rating. If the ACO has not advised the contractor to the contrary within 60 days from receipt of the contractor's report, the proposed CWAS will be considered approved. Assuming the timely submission of the contractor's data, the contractor's CWAS rating for the prior fiscal year will be applied to the current year's operations as it affects relaxation of administrative controls, pending the ACO's determination; but see § 15.201–3 of this chapter for treatment of reasonableness of indirect overhead costs. In lieu of validation by DCAA, the data relative to commercial work and Government firm fixed-price contracts and subcontracts (or in the alternative as agreed upon with the ACO, the total CWAS proposal) will be accepted on the basis of a report thereon by an independent public acountant to the effect that the data involved is stated in accordance with the procedures and requirements set forth in this subpart.

§ 3.1008 Maintenance of records.

Each Defense Contract Administration Services Region shall maintain a current central register of CWAS ratings established for contractors subject to ACO cognizance by that Region. Copies of all CWAS ratings approved, withdrawn, or reinstated by regional ACO's will also be forwarded to Headquarters, Defense Supply Agency, Attention: DSAH–F, where a master register will be maintained. Similarly, ACO's assigned under the National Plant Cognizance Program will forward copies of all CWAS ratings approved, withdrawn, or reinstated for their contractors to Headquarters, Defense Supply Agency, Attention: DSAH–F, for integration into the master register. This master register is maintained for benefit of contracting officers, auditors, and other Department of Defense personnel who may require approved CWAS ratings on contractors who have reported under these procedures. These ratings may be obtained from Headquarters, Defense Supply Agency, Attention: DSAH–F.

Subpart K—Acquisition of Automatic Data Processing Equipment

§ 3.1100 Contractor acquisition of automatic data processing equipment (ADPE).

§ 3.1100–1 General.

(a) This section is applicable to all ADPE, as defined in § 1.201–29 of this

chapter, except as components of end items to be delivered to the Government.

(b) If ADPE is purchased for the account of the Government or if title to the ADPE will pass to the Government, the acquisition must be approved as required by Part 13 of this chapter.

§ 3.1100–2 Review of decision to lease.

(a) If the total cost of leasing the ADPE is to be reimbursed under one or more cost reimbursement type contracts, the contracting officer shall, prior to approval of the proposed lease agreement:

(1) Survey the Defense Supply Agency (DSAH–LSR) for availability of excess ADPE which could be issued as GFP (see § 13.301 of this chapter) and which would fulfill the contractor's requirements (including timely availability and technical compatibility);

(2) Determine whether, under § 15.205–48 of this chapter, leasing is the appropriate method of acquisition from the Government's standpoint;

(3) Consider whether the ADPE should be leased under a Federal Supply Schedule Contract (see Subpart I, Part 5 of this chapter);

(4) If the rental of ADPE through a commercial contract is authorized, require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase or other benefits earned through rental payments; and

(5) Obtain approval of the leasing arrangement of the ADPE from the Senior ADPE policy official of the Department or Agency which predominantly generated the requirement for the contract end item; in the case of ADPE to be leased on a noncompetitive basis, the request for approval shall be forwarded to the Assistant Secretary of Defense (Installations and Logistics) through the Senior ADPE policy official referenced above.

(b) If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total cost is to be allocated to cost reimbursement type contracts, the administrative contracting officer should arrange for:

(1) An initial review and an annual review thereafter of the contractor's ADPE system for the purpose of evaluating, under § 15.205–48 of this chapter, his existing ADPE capability and the need to continue leasing; and

(2) Submission by the contractor to the ACO of any proposed lease of a new system and any proposed major changes to an existing system, for advance determination of the validity of the stated requirement and the reasonableness of leasing and resulting cost.

(A major change is any addition or substitution of ADPE which will have an annual cost in excess of $25,000.) After the initial review and after each annual review, and also after review of any proposed lease of a new system or major change, the ACO should either enter into an advance understanding with the § 15.107 of this chapter, to provide a basis for concurrence in the proposed lease, or in the alternative notify the contractor of the Government's nonconcurrence and of consequent cost disallowance contemplated under § 15.205–48 of this chapter.

(c) In implementing the above, technical ADP assistance will be provided as necessary to the contracting officer by the Department having the preponderance of interest with the contractor.

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

4. Section 4.116–4(c)(1) is revised and new § 4.118 is added, as follows:

§ 4.116–4 Transfer of title to equipment to nonprofit educational or research institutions.

* * * * *

(c) *Transfer of title.* (1) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, shall provide, or shall be amended to provide, for transfer to contractors of title to each item of equipment having an acquisition cost of less than $200 and purchased with funds available for grants or contracts for the conduct of basic or applied research. With respect to such equipment already in possession of such contractors, the contracting officer shall vest in the contractor title to all such low cost equipment at the time of amendment of the appropriate contract or as soon as practicable thereafter. With respect to such equipment to be acquired by the contractor for the account of the Government, the contracting officer shall vest in the contractor title to such equipment upon receiving from the contractor a written receipt. The requirements of this section are not applicable to transfers of title that are precluded by controls governing the equipment involved.

* * * * *

§ 4.118 Contractor team arrangements.

(a) *Definition.* A contractor team arrangement is one whereby two or more companies form a partnership or joint venture to act as a potential prime contractor or whereby a potential prime contractor agrees with one or more other companies to act as his subcontractor(s) under a specified Government procurement or program.

(b) *Policy.* There are times when it may be desirable, both from the Government and Industry standpoints, for companies to enter into a team arrangement prior to a Government contract award or thereafter. Team arrangements may be particularly appropriate for engineering and operational system developments, but may be used in other appropriate situations, including production procurement. Team arrangements allow a prime contractor and subcontractor to complement the unique capabilities of each and to offer the Government the best combination of capabilities to achieve the system performance, cost and delivery desired for the system being procured. The Government will recognize the integrity and validity of contractor team arrangements, provided they are identified and company relationships are stated in a proposal. Under a contractor team arrangement, the prime contractor is fully responsible for the performance of the contract. The Government normally will not require or encourage dissolution of contractor team arrangements. These policies do not authorize arrangements in violation of antitrust statutes and do no limit the Government's rights to:

(1) Approve subcontracts in accordance with ASPR requirements;

(2) Determine the responsibility of a prime contractor on the basis of the stated contractor team arrangement;

(3) Provide the selected prime contractor with data rights owned or controlled by the Government; and

(4) Pursue its policies on competitive procurement, subcontracting and component breakout, after initial production procurement or at any other time.

PART 5—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5. Sections 5.902 and 5.903–1 are revised to read as follows:

§ 5.902 Limitation.

Contractors shall not be authorized to utilize General Services Administration supply sources (a) in connection with the performance of fixed-price type contracts, even though such contracts provide for price adjustment, escalation, redetermination, or cost-reduction incentive; or (b) for the leasing of equipment to be utilized in the performance of cost-reimbursement type contracts, other than automatic data processing equipment for use only in performance of cost reimbursement contracts where the entire rental cost will be charged to those contracts. Contractors operating under the above types of contracts may, however, if they so desire, utilize GSA supply source listings for price information purposes. Such listings (GSA catalogs and copies of GSA Federal Supply Contracts) as may be readily available in purchasing offices and contract administration offices will be made available for review by contractors for this purpose.

§ 5.903–1 Basic authority.

Contractors shall be authorized to utilize General Services Administration supply sources only (a) where title to property ordered under Federal Supply Schedule contracts will pass to and vest in the Government directly from the Federal Supply Schedule contractor (rather than through the prime contractor), (b) where the contractor will lease automatic data processing equipment under a Federal Supply Schedule contract for use only in performance of cost-reimbursement contracts, and the entire rental cost will be charged to those contracts, or (c) where title to Government-owned property ordered from General Services Administration stores stock will remain in the Government.

PART 7—CONTRACT CLAUSES

6. Section 7.104–51 is revoked and new §§ 7.105–8, 7.105–9, 7.304–8, 7.603–45, 7.604–4, and 7.606–17 are added, as follows:

§ 7.104–51 Commercial warranty. [Revoked]

§ 7.105–8 Material Inspection and Receiving Report.

(See Defense Procurement Circular 54 of June 26, 1967—Item II.)

§ 7.105–9 Commercial warranty.

In accordance with § 1.324–4 of this chapter, an appropriate commercial warranty clause may be inserted.

§ 7.304–8 Warranty.

In accordance with § 1.324 of this chapter, an appropriate warranty clause may be inserted.

§ 7.603–45 N.C. Sales and Use Tax.

In accordance with § 11.302(c) of this chapter, insert the clause set forth in § 11.302(e).

§ 7.604–4 Warranty.

In accordance with § 1.324 of this chapter, an appropriate warranty clause may be inserted.

§ 7.606–17 N.C. Sales and Use Tax.

In accordance with § 11.302(c) of this chapter, insert the clause set forth in § 11.302(e).

7. Section 7.704–22 is revised; in § 7.705–5, the clause heading and clause paragraph (c) are revised; § 7.802–3 is revised; in § 7.802–4, the introductory text and clause paragraph (b) are revised; and in § 7.1301–5, clause paragraph (c) is revised, as follows:

§ 7.704–22 Military security requirements.

In accordance with the instructions in § 7.702–29, insert the contract clause called for therein, except that "ASPR 7–702.4" shall be substituted for "this contract" in the second sentence of paragraph (e).

§ 7.705–5 Labor standards for construction work.

* * * * *

LABOR STANDARDS FOR CONSTRUCTION WORK (OCTOBER 1967)

* * * * *

(c) Upon determination that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, the Contractor shall submit a request for a predetermination of the prevailing wage rates to be made applicable to such work. Upon receipt of such request, the Contracting Officer shall, as soon as possible, obtain a predetermination of the applicable prevailing wage rates and publish such rates and incidental instructions in numbered attachments to this contract. Upon publication thereof, such attachments shall be considered the wage determination decision of the Secretary of Labor referred to in paragraph (a) of the "Davis-Bacon Act" clause. Each such attachment shall indicate to what work the rates set forth therein shall apply, including the period of time within which subcontracts subject to such rates may be issued.

§ 7.802–3 Limitation of Government liability.

LIMITATION OF GOVERNMENT LIABILITY (OCTOBER 1967)

(a) The Contractor is not authorized to make expenditures or to incur obligations, in performance of this contract, which exceed _____ dollars ($_____).

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars ($_____).

§ 7.802–4 Payments clauses for letter contracts.

The following clause shall be included in all letter contracts contemplating a cost-type contract except letter contracts for conversion, alteration or repair of ships. See §§ 163.72 and 163–74 of this chapter for the policy with respect to progress payments under letter contracts contemplating a fixed price type contract. When payments are to be made under letter contracts contemplating a fixed price type contract, a Progress Payments clause shall be included in the contract in accordance with § 163.84 of this chapter: *Provided,* That in such letter contracts for construction, the following clause, supplemented by appropriate title, risk of loss and other provisions, shall be included.

PAYMENTS OF ALLOWABLE COSTS PRIOR TO DEFINITIZATION OF CONTRACT (APRIL 1966)

* * * * *

(b) For the purpose of determining the amounts payable to the Contractor hereunder, allowable items of cost shall be determined by the Contracting Officer in accordance with the statement of cost principles set forth in Part _____ of Section XV of the Armed Services Procurement Regulation. In no event shall the total reimbursement made under this paragraph exceed _____[1] percent (_____%[1]) of the maximum amount of the Government's liability otherwise set forth in this letter contract.

§ 7.1301–5 Sanitary conditions.

SANITARY CONDITIONS (APRIL 1967)

* * * * *

(c) The Government shall notify the Contractor in writing of any failure to meet the sanitary standards, including bacteriological requirements, prescribed by this contract. If such failure has not been corrected within three (3) days from the date the Contractor receives said notice, the whole or any part of this contract may be terminated for default or, at the option of the Contracting Officer, the Contractor's right to perform under this contract may be partially or wholly suspended for not less than ten (10) days, and for such longer period of time as the Contracting Officer deems appropriate to permit correction of such failure. A suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. If the Contractor does not correct the failure to meet the sanitary standards, including bacteriological requirements, within any suspension period specified by the Contracting Officer, the Government may terminate the unexpired portion of this contract for default without allowing additional time for correction, notwithstanding paragraph (a) (ii) of the clause entitled "Default."

* * * * *

[1] Insert seventy percent (70%) or in case of a small business concern, seventy-five percent (75%).

PART 8—TERMINATION OF CONTRACTS

8. New paragraph (e) is added to § 8.505–1, and new § 8.505–4 is added, as follows:

§ 8.505–1 General.

* * * * *

(e) Automatic data processing equipment, including that on lease in which the Government is entitled to rental benefits, shall be screened in accordance with § 8.505–4.

§ 8.505–4 Procedures for automatic data processing equipment (ADPE).

(a) Those items of ADPE as defined in § 1.201–29 of this chapter (regardless of FSC) which are Government-owned or which are leased by the contractor under terms which provide to the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported to the Defense Supply Agency, Attention: DSAH–LSR, Cameron Station, Alexandria, Va. 22314, on Standard Form 120, "Report of Excess Personal Property" (original and four copies). Normally the time required for acquisition studies required to select replacement equipment makes it possible to project the anticipated release date 180 days before the equipment is available for transfer. ADPE should be reported as soon as it is possible to project the release date. The following minimum reporting schedule shall, however, apply.

(1) Government-owned ADPE will be reported upon receipt of notice of complete termination or when it is determined that the property will no longer be needed on the contract. The release date assigned will be the last day of the plant clearance period or 90 days after the property becomes inactive. In the event of changes in release date, revised reports will be submitted.

(2) Leased ADPE, the total cost of which is charged to one or more cost-reimbursement type contracts, will be reported when it is determined that the property will no longer be needed on the contracts, or a major portion thereof. In order to preclude unnecessary lease costs, the release date established shall not extend ADPE on rental beyond the date it can be released to the lessor. Prompt reporting of leased ADPE is necessary in order to afford an opportunity to reutilize the property and protect the Government's equity.

(b) With respect to leased equipment, the total cost of which is charged to one or more cost-reimbursement type contracts, a quotation shall be requested from the lessor projecting the reduced price at which the equipment may be

purchased based on accumulated rental credits through the anticipated release date. A copy of this quotation should be attached to the Standard Form 120, but submission of the Standard Form 120 should not be delayed pending receipt of this information. If it is not available at that time, it should be provided when received.

(c) The following information will be reported on Standard Form 120:

(1) A complete list of each equipment item, identified by manufacturer's series and model number, and modifications and attachments applied to each component, including identification number if Government-owned; indicate type of maintenance contract, contractor, and monthly cost;

(2) A separate attachment, showing the time in service for each component, average utilization (hours per month) and average down-time per month for the 12-month period immediately preceding the report (if appropriate, a narrative description of any history of repeated equipment failure shall be included);

(3) A list of compilers and other software packages (such as executive routines), engineering drawings and maintenance manuals available with the equipment; and

(4) In the instances of a complete equipment configuration, information regarding power and air conditioning requirements.

(d) The Defense Supply Agency shall control ADPE reported excess.

Shipments shall be made upon receipt of requests approved by DSA.

PART 11—TAXES

9. New § 11.302 is added, as follows:

§ 11.302 N.C. Sales and Use Tax.

(a) A provision of the N.C. Sales and Use Tax Act authorizes counties and incorporated cities and towns in North Carolina to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment which become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In United States v. Clayton, 250 F. Supp. 827 (1965) appeals dismissed per curiam 384 U.S. 154, 156 (1966), it was held that the United States is entitled to the benefit of such provision of the N.C. Sales and Use Tax Act, but that the United States must resort to the refund procedure of the Act and the regulations to recover what it is due.

(b) The Act provides that in order to receive the refund authorized thereby claimants must file a written request for refund within 6 months after the close of the fiscal year of the claimant and must substantiate such request for refund by such records, receipts and information as the Commissioner of Revenue may require. The Act further provides that no refunds shall be made on applications not filed within the time allowed thereby and in such manner as the Commissioner may otherwise require. The requirements of the Commissioner are set forth in regulations which, in pertinent part, provide:

To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales and/or use taxes paid thereon. In the event the contractor makes several purchases from such contractor certified statements ment must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant.

(c) To assure that the United States will be in a position to obtain refunds of North Carolina sales and use taxes to which it is entitled, the clause set forth in paragraph (e) of this section shall be inserted in all construction contracts to be performed in North Carolina, including vessel repair contracts.

(d) The clause set forth in paragraph (e) of this section requires construction contractors, including vessel repair contractors, to submit to contracting officers by August 31 each year certified statements covering N.C. sales and use taxes paid during the 12-month period which ended the preceding June 30. It will be the responsibility of each contracting officer concerned to assure that contractors comply with this requirement and to obtain the annual refund of N.C. sales and use taxes to which his activity may be entitled. The application for refund must be filed each year before December 31 and in the manner and form required by the Commissioner of Revenue of the State of North Carolina. The first refund application to be filed by contracting officers will cover taxes paid during the 12-month period from July 1, 1966, to June 30, 1967. Copies of the form to be used in filing refund claims may be obtained by writing to the State of North Carolina Department of Revenue, Raleigh, N.C. 27602.

(e) Contract clauses:

N.C. SALES AND USE TAX (OCTOBER 1966)

(a) As used throughout this clause, the term "materials" means building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price type contract as defined in the Armed Services Procurement Regulation, the contract price includes N.C. sales and use taxes to be paid with respect to materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement type contract as defined in such regulation, any N.C. sales and use taxes paid by the Contractor with respect to materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below:

(i) The Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of N.C. sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, such certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the N.C. sales and use taxes paid thereon. Such statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of N.C. sales or use tax paid thereon by the Contractor. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes.

(ii) The Contractor shall obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next July 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion. If this contract is not completed before the next July 1, such certified statements shall be submitted on or before the 31st day of August of each year and shall cover taxes paid during the 12-month period which ended the preceding June 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period _____ to _____ (name of contractor or subcontractor) paid N.C. sales and use taxes aggregating $_____ with respect to building materials, supplies, fixtures, and equipment which have become a part of or annexed to a building or structure erected, altered, or repaired by (name of contractor) for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the N.C. sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and N.C. sales or use taxes paid thereon are as set forth in the attachments hereto.

NOTE: In ship repair contracts, change paragraph (a) to read as follows:

(a) As used throughout this clause, the term "materials" means materials, supplies, fixtures, and equipment which become a part of or are annexed to any vessel altered or repaired under this contract.

PART 13—GOVERNMENT PROPERTY

10. Section 13.101–8 is revised; new paragraph (g) is added to § 13.301; §§ 13.312 and 13.701(c) are revised; and in § 13.702, the introductory text of paragraph (a) is revised, as follows:

§ 13.101–8 Facilities.

Facilities means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment (see § 30.2 of this chapter, item 102.10).

§ 13.301 Providing facilities.

* * * * *

(g) The proposed acquisition of automatic data processing equipment as de-

fined in § 1.201–29 of this chapter shall be:

(1) Submitted on DD Form 1419 through the Administrative Contracting Officer to Headquarters, Defense Supply Agency, Attention: DSAH–LSR, Cameron Station, Alexandria, Va. 22314;

(2) Approved by the Senior ADPE policy official of the Department or Agency which generated the requirement for the contract end item; in the case of ADPE to be acquired on a noncompetitive basis, the request for approval shall be forwarded to the Assistant Secretary of Defense (Installations and Logistics) through the Senior ADPE policy official referenced above.

§ 13.312 Items to be screened by Defense Industrial Plant Equipment Center.

The items to be screened by the Defense Industrial Plant Equipment Center (DIPEC) in accordance with §§ 13.301(f) and 13.306–4 are listed in the following Joint DoD Handbooks:

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

[NOTE: Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402]

FSC	Title	Army	Navy	Air Force	DSA	Marine Corps
6625	Electrical and Electronic Properties Measuring and Testing Instruments.	SB 708–6625–1.		AFM 78–6.	DSAH 4215.1.	
3220	Woodworking Machines	SB 708–3220–1.	NAVSANDA Pub 5500.	AFM 78–7.	DSAH 4215.2.	MCO 4870.6.
3411–3419, 3441–3449.	Production Equipment Directory D1 Metalworking Machinery 1960 Revision Volumes 1 and 2.[1]					
3411–3419, 3441–3449.	Supplement to Production Equipment Directory D1 Metalworking Machinery 1960 Revision.[1]	SB 708–3400–1.	NAVSANDA Pub 5501.	AFM 78–42.	DSAH 4215.3.	MCO P3870.7.
3431, 3432, 3433, 3436, 3438.	Production Equipment Directory D2 Welding, Heat Cutting, and Metallizing Equipment 1961 Edition.[1]					
3424, 3655, 4430.	Industrial Furnaces and Ovens Volumes 1 and 2.	SB 708–4430–1.	NAVSANDA Pub 5502.	AFM 78–8.	DSAH 4215.4.	MCO P4870.8.
3815, 3910, 3920, 3930, 3950, 3990.	Material Handling Equipment and Lifting Electro-Magnets Volumes 1 and 2.	SB 708–3900–1.	NAVSANDA Pub 5503.	AFM 78–9.	DSAH 4215.5.	MCO P4870.9.
6635	Physical Properties Testing Equipment.	SB 708–6635–1.	NAVSANDA Pub 5504.	AFM 78–10.	DSAH 4215.6.	MCO P4870.10.
3540	Wrapping and Packaging Machinery.	SB 708–3540–1.	NAVSANDA Pub 5505.	AFM 78–11.	DSAH 4215.7.	MCO P4870.11.
3520, 3530, 3625.	Textile Industries Machinery and Industrial Sewing Machines.	SB 708–3500–1.	NAVSANDA Pub 5506.	AFM 78–12.	DSAH 4215.8.	MCO P4870.12.
6120	Distribution and Power Station Transformers.	SB 708–6120–1.	NAVSANDA Pub 5507.	AFM 78–13.	DSAH 4215.9.	MCO P4870.13.
6636	Environmental Chambers	SB 708–6636–1.	NAVSANDA Pub 5508.	AFM 78–14.	DSAH 4215.10.	MCO P4870.14.
6130	Power Conversion Equipment, Electrical.	SB 708–6130–1.	NAVSANDA Pub 5509.	AFM 78–22.	DSAH 4215.11.	MCO P4870.15.
3422, 3426	Rolling Mills, Drawing Machines, and Metal Finishing Equipment.	SB 708–3400–2.	NAVSANDA Pub 5510.	AFM 78–15.	DSAH 4215.12.	MCO P4870.16.
3450, 3460, 5220.	Portable Machine Tools and Toolroom Layout Plates and Tables.	SB 708–3400–3.	NAVSANDA Pub 5511.	AFM 78–16.	DSAH 4215.13.	MCO P4870.17.
4310	Compressors and Vacuum Pumps	SB 708–4310–1.	NAVSANDA Pub 5512.	AFM 78–17.	DSAH 4215.14.	MCO P4870.18.
6680, 6685	Liquid and Gas, Pressure, Temperature, Humidity, and Mechanical Motion Measuring and Controlling Instruments.	SB 708–6600–1.	NAVSANDA Pub 5513.	AFM 78–18.	DSAH 4215.15.	MCO P4870.19.
3635	Crystal and Glass Industries Machinery.	SB 708–3635–1.	NAVSANDA Pub 5514.	AFM 78–19.	DSAH 4215.16.	MCO P4870.20.
4440	Driers, Dehydrators, and Anhydrators.	SB 708–4440–1.	NAVSANDA Pub 5515.	AFM 78–20.	DSAH 4215.17.	MCO P4870.21.
6650, 6670	Scales, Balances, and Optical Instruments.	SB 708–6600–2.	NAVSANDA Pub 5516.	AFM 78–25.	DSAH 4215.18.	MCO P4870.22.
3680	Foundry Equipment	SB 708–3680–1.	NAVSANDA Pub 5517.	AFM 78–23.	DSAH 4115.19.	MCO P4870.23.
4320	Pumps	SB 708–4320–1.	NAVSANDA Pub 5518.	AFM 78–29.	DSAH 4215.20.	MCO P4870.24.
6675, 6695	Combination and Miscellaneous Instruments Including Dynamometers.	SB 708–6695–1.	NAVSANDA Pub 5519.	AFM 78–30.	DSAH 4215.21.	MCO P4870.25.
6105, 6115, 6125.	Motors, Generators, and Generator Sets, and Rotating Converters.	SB 708–6100–1.	NAVSANDA Pub 5520.	AFM 78–31.	DSAH 4215.22.	MCO P4870.26.
4920	Aircraft Maintenance and Repair Shop Specialized Equipment.	SB 708–4920–1.	NAVSANDA Pub 5521.	AMF 78–33.	DSAH 4215.23.	MCO P4870.27.
4330	Centrifugals, Separators and Filters.	SB 708–4330–1.	NAVSANDA Pub 5522.	AFM 78–27.	DSAH 4215.24.	MCO P4870.28.
4410, 4420	Industrial Boilers, Heat Exchangers, and Steam Condensers.	SB 708–4400–1.	NAVSUP Pub 5524.	AFM 78–24.	DSAH 4215.25.	MCO P4870.29.
6110	Electrical Control Equipment	SB 708–6110–1.	NAVSUP Pub 5525.	AFM 78–40.	DSAH 4215.26.	MCO P4870.30.
4110, 4120	Refrigeration and Air Conditioning Equipment.	SB 708–4100–1.	NAVSUP Pub 5526.	AFM 78–43.	DSAH 4215.27.	MCO P4870.31.
5430	Storage Tanks	SB 708–5430–1.	NAVSUP Pub 5527.	AFM 78–35.	DSAH 4215.28.	MCO P4870.32.
3610, 6710, 6720, 6730, 6740, 6780.	Photocopying and Photographic Equipment.	SB 708–6700–1.	NAVSUP Pub 5528.	AFM 78–32.	DSAH 4215.29.	MCO P4870.34.
6630, 6640	Chemical Analysis and Laboratory Instruments.	SB 708–6600–3.	NAVSUP Pub 5529.	AFM 78–38.	DSAH 4215.30	MCO P4870.35.
4140, 4460, 7910.	Air Purification Equipment, Industrial Fans, Blowers, and Vacuum Cleaners.	SB 708–4100–2.	NAVSUP Pub 5530.	AFM 78–21.	DSAH 4215.31.	MCO P4870.36.
3915	Materials Feeders	SB 708–3915–1.	NAVSUP Pub 5531.	AFM 78–47.	DSAH 4215.32.	MCO P4870.37.
3615, 3660	Pulp and Paper Industries and Size Reduction Machinery.	SB 708–3600–1.	NAVSUP Pub 5532.	AFM 78–44.	DSAH 4215.33.	MCO P4870.38.
3620	Rubber and Plastics Working Machinery.	SB 708–3620–1.	NAVSUP Pub 5534.	AFM 78–28.	DSAH 4215.35.	MCO P4870.40.
3611, 3693	Industrial Marking and Assembly Machines.	SB 708–3600–2.	NAVSUP Pub 5535.	AFM 78–26.	DSAH 4215.36.	MCO P4870.41.
3650	Chemical and Pharmaceutical Products Manufacturing Machinery.	SB 708–3650–1.	NAVSUP Pub 5536.	AFM 78–45.	DSAH 4215.37.	MCO P4870.42.
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment.	SB 708–4930–1.	NAVSUP Pub 5537.	AFM 78–48.	DSAH 4215.38.	MCO P4870.43.
3690, 4925, 4933.	Specialized Ammunition and Ordnance Machinery.	SB 708–4900–1.	NAVSUP Pub 5538.	AFM 78–49.	DSAH 4215.39.	MCO P4870.44.

[1] Production Equipment Directories D1 and D2 for sale by Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Revisions in IPE Handbook format scheduled for publication in FY 68.

§ 13.701 Applicability.

* * * * *

(c) As usual throughout this subpart, the term "short form contract" shall include small purchases made under Subpart F, Part 3 of this chapter, and short form negotiated supply contracts (see § 16.102–2(c) of this chapter) under which Government property having an acquisition cost of $25,000 or less is to be furnished.

§ 13.702 Government property clause for fixed-price contracts.

(a) Except as provided in paragraph (c) of this section and in § 13.710, the following clause shall be used in fixed-price contracts and short form contracts (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which a Department is to furnish to the contractor or the contractor is to acquire, Government property.

* * * * * *

11. In § 13.704, the clause heading and clause paragraph (f) are revised; in § 13.706(a), the clause heading and clause paragraph (d) are revised; and in § 13.707(a), the clause heading and clause paragraph (d) are revised, as follows:

§ 13.704 Special tooling clause for fixed-price contracts.

* * * * *

SPECIAL TOOLING (OCTOBER 1967)

* * * * *

(f) *Disposition of Special Tooling.* Within ninety (90) days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor:

(i) A list specifying the particular products, parts, or services for which the Government may require special tooling together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased;

(ii) An acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto;

(iii) A direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list;

(iv) A statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or

(v) Any combination of the foregoing, as the circumstances warrant.

The Contractor shall promptly comply with any request by the Contracting Officer under this pargraph to transfer title to any items of special tooling, and shall: (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government as directed by the Contracting Officer; or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. To the extent that compliance with such directions under (iii), (1) or (2) above occasions any cost to the Contractor for which he will not otherwise be compensated, the contract price shall be equitably adjusted in accordance with the procedures of the "Changes" clause hereof. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that he will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph. Any failure of the Contracting Officer to give the directions required under (i)–(v) above within the specified period shall be construed as a direction pursuant to (iii) above.

* * * * *

§ 13.706 Government property clause for fixed-price type contracts with nonprofit institutions.

(a) * * *

GOVERNMENT PROPERTY (FIXED PRICE, NONPROFIT) (OCTOBER 1967)

* * * * *

(d) *Property administration.* The Contractor shall comply with the provisions of Appendix C, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

* * * * *

§ 13.707 Government property clause for cost-reimbursement type research and development contracts with nonprofit institutions.

(a) * * *

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, NONPROFIT) (OCTOBER 1967)

* * * * *

(d) *Property administration.* The Contractor shall comply with the provisions of Appendix C, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

* * * * *

PART 14—PROCUREMENT QUALITY ASSURANCE

12. Section 14.407–3 is revised to read as follows:

§ 14.407–3 Selective evaluation at the subcontract level.

Selective evaluation of the contractor's control of his subcontractors may be requested by the contract administration office responsible for the contract in order to provide that office with additional assurance that supplies and services being received from subcontractors conform to quality requirements. Communications between contract administration offices concerning procurement quality assurance actions to be performed shall be through Government channels. Requests for selective evaluation shall indicate Government procurement quality actions to be performed, e.g., specific characteristics, processes and procedures to be verified, tests to be witnessed, and records, reports, and certificates to be evaluated.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

13. New paragraph (j) is added to § 15.107; §§ 15.201–3 and 15.205–6 are revised; the section heading of § 15.205–7 is revised; § 15.205–8 is revised; the section headings of §§ 15.205–9, 15.205–17, 15.205–18, and 15.205–19 are revised, as follows:

§ 15.107 Advance understandings on particular cost items.

* * * * *

(j) Leasing of automatic data processing equipment (ADPE).

§ 15.201–3 Definition of reasonableness.

(a) *General.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to—

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arm's-length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(3) The action that a prudent business man would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government and the public at large; and

(4) Significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

(b) *Application of "contractor weighted average share in cost risk" (CWAS).* (1) Except as provided in subparagraphs (2) and (3) of this paragraph, to the extent that the allowability of an indirect cost is based on reasonableness of the nature and amount, the reasonableness shall be determined by reliance upon the approved "contractor weighted average share in cost risk" (CWAS) (see Subpart K Part 3 of this chapter, for the definition of CWAS), computed from data of the year in which the cost was incurred, as follows:

(i) If the profit center within which the cost was incurred has a CWAS rating of 65 points or higher, 35 points or more of which rating were derived from competitive firm fixed-price contracts or commercial sales, the reasonableness of the cost will not be questioned (but see § 3.1004(b) of this chapter); but

(ii) If the profit center within which the cost was incurred has a CWAS rating of 50 or higher but less than 65, the provisions of subdivision (i) of this subparagraph may be applied at the discretion of the administrative contracting officer.

(2) The cost principles contained in §§ 15.205–15.205–48, in certain cases, carry either a (CWAS) or a (CWAS–NA) indicator. Those cost principles (section texts) subject to CWAS are preceded by the indicator (CWAS) and those to which CWAS is not applicable are preceded by the indicator (CWAS–NA). In all cases where cost reasonableness is not determined under CWAS because of its express inapplicability, the determination will be made in accordance with paragraph (a) of this section.

(3) The determination of cost reasonableness will be made in accordance with paragraph (a) of this section in all cases where the contractor could not qualify or does not choose to qualify under CWAS.

(4) Questions involving the charging off of assets or setting up of other than normal yearend accruals or reserves will be considered to be questions of allocability or accounting practices rather than reasonableness.

(5) If the profit center incurs costs (e.g., travel, relocation, personnel compensation) on the basis of prescribed corporate-wide policy uniformly applied to all profit centers, consideration should be given to the corporate CWAS in determining the reasonableness of such locally incurred costs.

(6) The CWAS rating for the company shall be used in testing the reasonableness of corporate type expenses which are allocated to the profit centers. If the contractor has intermediate management organizations, such as Groups, he shall develop a CWAS rating for such intermediate management organizations, which rating shall be applicable to the expenses allocated by such intermediate organizations to the profit centers.

(7) Indirect costs incurred in cost centers which are applied to specific contracts without relation to total profit center operations may be eliminated by the ACO from the application of CWAS.

§ 15.205–6 Compensation for personal services.

(a) *General.* (1) (CWAS) Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance. It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans. Except as otherwise specifically provided in this section, such costs are allowable to the extent that the total compensation of individual employees is reasonable for the services rendered and they are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(2) (CWAS) Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services. In the administration of this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. Such test need be applied only to those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line. However, certain conditions give rise to the need for special consideration and possible limitation as to allowability for contract cost purposes where amounts appear excessive. Among such conditions are the following:

(i) Compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of profits. (CWAS–NA)

(ii) Any change in a contractor's compensation policy resulting in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. (CWAS)

(iii) The contractor's business is such that his compensation levels are not subject to the restraints normally occurring in the conduct of competitive business. (CWAS)

(3) (CWAS) Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.

(4) (CWAS) Notwithstanding any other provisions of this section costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government contracts, are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of cost will not be made under this subparagraph unless:

(i) The contractor has been permitted an opportunity to justify the costs, and

(ii) Due consideration has been given to whether unusual conditions pertain to the Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(5) In addition to the general requirements set forth in subparagraphs (1) through (4) of this paragraph, certain forms of compensation are subject to further requirements as specified in paragraphs (b) through (i) of this section.

(b) *Salaries and wages.* (CWAS) Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable.

(c) *Cash bonuses and incentive compensation.* (CWAS) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance, are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply in effect, an agreement to make such payment (but see § 15.107). Bonuses, awards, and incentive compensation when any of them are deferred are allowable to the extent provided in paragraph (f) of this section.

(d) *Bonuses and incentive compensation paid in stock.* (CWAS) Costs of bonuses and incentive compensation paid in the stock of the contractor or of an affiliate are allowable to the extent set forth in paragraph (c) of this section (including the incorporation of the principles of paragraph (f) of this section for deferred bonuses and incentive compensation), subject to the following additional requirements:

(1) Valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(2) Accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

Such costs otherwise allowable are subject to adjustment according to the principles set forth in paragraph (f) (3) of this section. (But see § 15.107.)

(e) *Stock options.* (CWAS–NA) The cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(f) *Deferred compensation.* (CWAS–NA). (1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension, annuity, stock bonus, and profit sharing plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payments; and (iv) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service. (But see § 15.107.)

(3) In determining the cost of deferred compensation allowable under the contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the contractor; forfeitures which inure to the benefit of other employees covered by a deferred compensation plan with no reduction in the contractor's costs will not normally give rise to adjustment in contract costs. Adjustments for normal employee turnover shall be based on the contractor's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the contractor can demonstrate that his contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation, shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within subdivision (i) of this subparagraph, may be made the subject of agreement the Government and the contractor either as to an equitable adjustment or a method of determining such adjustment.

(4) In determining whether deferred compensation is for services rendered during the contract period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as, requirements of continued employment, consultation after retirement, and covenants not to compete.

(g) *Fringe benefits (CWAS).* Fringe benefits are allowances and services provided by the contractor to his employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance pay (CWAS).* See § 15.205–39.

(i) *Training and education expenses (CWAS).* See § 15.205–44.

(j) *Location allowances (CWAS).* "Location allowances," sometimes called "supplemental pay" or "incentive pay," are allowable to the extent consistent with § 12.105 of this section.

§ 15.205–7 Contingencies (CWAS–NA).

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§ 15.205–8 Contributions and donations (CWAS–NA).

Contributions and donations are unallowable.

§ 15.205–9 Depreciation (CWAS–NA).

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§ 15.205–17 Interest and other financial costs (CWAS–NA).

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§ 15.205–18 Labor relations costs (CWAS).

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§ 15.205–19 Losses on other contracts (CWAS–NA).

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14. Section 15.205–20 is revised; the section headings of §§ 15.205–21, 15.205–22, 15.205–23, and 15.205–24 are revised; in § 15.205.25, paragraphs (b), (c), and (d) are revised; and the section headings of §§ 15.205–26, 15.205–28, 15.205–29, and 15.205–30 are revised as follows:

§ 15.205–20 Maintenance and repair costs.

(a) (CWAS) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see § 15.205–9):

(1) Normal maintenance and repair costs are allowable;

(2) Extraordinary maintenance and repair costs are allowable, provided such are allocated to the periods to which applicable for purposes of determining contract costs. (But see § 15.107.)

(b) (CWAS–NA) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

§ 15.205–21 Manufacturing and production engineering costs (CWAS).

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§ 15.205–22 Material costs (CWAS).

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§ 15.205–23 Organization costs (CWAS–NA).

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§ 15.205–24 Other business expenses (CWAS).

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§ 15.205–25 Relocation costs.

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(b) (CWAS) Subject to paragraph (c) of this section, relocation costs of the type covered in paragraphs (a) (1), (2), (3), and (4) of this section are allowable, provided (1) the move is for the benefit of the employer; (2) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically; (3) the costs are not otherwise unallowable under the provisions of § 15.205–33, or any other section of this subpart (see § 15.107 as related to large scale contractor relocation); and (4) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) (CWAS) Costs otherwise allowable under paragraph (b) of this section are subject to the following additional provisions: (1) the transition period for incurrence of costs of the type covered in paragraph (a) (2) of this section shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time; and (2) allowance for cost of the type covered in paragraph (a) (3) of this section shall not exceed 8 percent of the sales price of the property sold. Costs of the type covered in paragraph (a) (3) and (4) of this section are allowable only in connection with the relocation of existing employees, and are not allowable for newly recruited employees.

(d) (CWAS–NA): Costs of the type covered in paragraph (a) (5) and (6) of this section are not allowable.

§ 15.205–26 Patent costs (CWAS–NA).

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§ 15.205–28 Plant protection costs (CWAS).

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§ 15.205–29 Plant reconversion costs (CWAS–NA).

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§ 15.205–30 Precontract costs (CWAS–NA).

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15. Section 15.205–31 is revised; the section headings of §§ 15.205–32 and

15.205–33 are revised; § 15.205–34 is revised; the section headings of §§ 15.205–35 and 15.205–36 are revised; § 15.205–37 is revised; and the section heading of § 15.205–38 is revised, as follows:

§ 15.205–31 Professional and consultant service costs—legal, accounting, engineering, and other.

(a) (CWAS): Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor are allowable, subject to paragraphs (b), (c), and (d) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see § 15.205–26).

(b) (CWAS): In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors among others may be relevant:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the contractor's capability in the particular area;

(3) The past pattern of such costs, particularly in the years prior to the award of Government contracts;

(4) The impact of Government contracts on the contractor's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-government contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service; estimate of time required, rate of compensation; termination provisions).

(c) (CWAS): In addition to paragraph (b) of this section, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

(d) (CWAS): Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract. (Also see § 15.205–23.)

§ 15.205–32 Profits and losses on disposition of plant, equipment, or other capital assets (CWAS–NA).

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§ 15.205–33 Recruitment costs (CWAS).

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§ 15.205–34 Rental costs (including sale and leaseback of facilities).

(a) (CWAS) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the contractor would have received had he owned the facilities.

(b) (CWAS–NA) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: *Provided*, That no part of such costs shall duplicate any other allowed costs.

(c) (CWAS–NA) Unless otherwise specifically provided in the contract, rental costs specified in sale and leaseback agreements, incurred by contractors through selling plant facilities to investment organizations, such as insurance companies, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the contractor would have received had he retained legal title to the facilities.

(d) The allowability of rental costs under unexpired leases in connection with terminations is treated in § 15.205–42(e).

§ 15.205–35 Research and development costs (CWAS–NA) (DPC 7).

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§ 15.205–36 Royalties and other costs for use of patents (CWAS).

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§ 15.205–37 Selling costs.

(a) Selling costs arise in the marketing of the contractor's products and include costs of sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and other related activities.

(b) (CWAS): Selling costs are allowable to the extent they are reasonable and are allocable to Government business (but see §§ 15.107 and 15.205–1). Allocability of selling costs will be determined in the light of reasonable benefit to the Government arising from such activities as technical, consulting, demonstration, and other services which are for purposes such as application or adaptation of the contractor's products to Government use.

(c) (CWAS–NA): Notwithstanding paragraph (b) of this section, salesmen's or agents' compensation, fees, commissions, percentages, or brokerage fees, which are contingent upon the award of contracts, are allowable only when paid to bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

§ 15.205–38 Service and warranty costs (CWAS).

* * * * *

16. Section 15.205–39 is revised; the section heading of § 15.205–40 is revised; § 15.205–41 is revised; the section headings of §§ 15.205–42, 15.205–43, 15.205–44, and 15.205–45 are revised; §§ 15.205–46 and 15.205–47 are revised; and new § 15.205–48 is added, as follows:

§ 15.205–39 Severance pay.

(a) (CWAS): Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by contractors to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant; or, where the contractor provides for accrual of pay for normal severances such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the contractor's plant; (CWAS) and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence. (CWAS–NA)

§ 15.205–40 Special tooling and special test equipment costs (CWAS–NA).

* * * * *

§ 15.205–41 Taxes.

(a) (CWAS): Taxes are charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes (including State and local income taxes) which the contractor is required to pay and which are paid or accrued in accordance with gen-

erally accepted accounting principles are allowable, except for—

(1) Federal income and excess profits taxes; (CWAS–NA)

(2) Taxes in connection with financing, refinancing, or refunding operations (see §15.205–17); (CWAS–NA)

(3) Taxes from which exemptions are available to the contractor directly or available to the contractor based on an exemption afforded the Government except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government; (CWAS–NA)

(4) Special assessments on land which represent capital improvements; (CWAS–NA) and

(5) Taxes on any category of property which is used solely in connection with work other than on Government contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work and taxes on contract or owned work-in-process inventory, and Government-owned work-in-process inventory when taxed, used solely in connection with Government work should be charged to such work.) (CWAS)

(b) (CWAS): Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable: *Provided,* That the contractor prior to payment of such taxes—

(1) Promptly requests instructions from the contracting officer concerning such taxes; and

(2) Takes all action directed by the contracting officer arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment or, (ii) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the contractor at the direction or with the concurrence of the contracting officer are allowable. Interest and penalties incurred by a contractor by reason of the nonpayment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to assure timely direction after prompt request therefor, are also allowable.

(c) (CWAS): Any refund of taxes, interest, or penalties, and any payment to the contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to a contractor incident to a refund tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest or penalties.

§ 15.205–42 Termination costs (CWAS–NA).

* * * * *

§ 15.205–43 Trade, business, technical, and professional activity costs (CWAS).

* * * * *

§ 15.205–44 Training and educational costs (CWAS).

* * * * *

§ 15.205–45 Transportation costs (CWAS).

* * * * *

§ 15.205–46 Travel costs.

(a) (CWAS): Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by contractor personnel in a travel status while on official company business.

(b) (CWAS): Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge.

(c) (CWAS): Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) (CWAS): Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract in accordance with the principle of direct costing. (See § 15.202.)

(e) (CWAS): Necessary, reasonable costs of family movements and personnel movements of a special or mass nature are allowable, subject to allocation on the basis of work or time period benefited when appropriate. (But see § 15.107.)

(f) *Air travel (CWAS–NA).* The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:

(1) Require circuitous routing,

(2) Require travel during unreasonable hours,

(3) Greatly increase the duration of the flight,

(4) Result in additional costs which would offset the transportation savings,

(5) Offer accommodations which are not reasonably adequate for the physical or medical needs of the traveler.

(g) *Travel via contractor owned, leased, and chartered aircraft (CWAS).* (1) "Cost of contractor owned, leased, and chartered aircraft," as that phrase is used herein, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs. This cost is allowable, if reasonable, to the extent the contractor can demonstrate that the use of such aircraft is necessary for the conduct of his business and that the increase in cost, if any, in comparison with alternative means of transportation, is commensurate with the advantages gained.

(2) Some of the factors to consider in determining the necessity for such aircraft are whether:

(i) Scheduled commercial airlines or other suitable less costly travel facilities are available at reasonable times, with reasonable frequency and serving the required destinations conveniently;

(ii) It is likely that critical or emergency situations might arise which could not be accommodated as effectively by scheduled commercial airline or other suitable less costly travel facilities;

(iii) The increased flexibility in scheduling would result in time savings and more effective utilization of key personnel;

(iv) National or industrial security demands privacy for key personnel who must work en route; and

(v) There exists a contract requirement for flight testing of equipment.

(3) When the need for contractor owned, leased or chartered aircraft has been demonstrated, additional factors such as the following shall be considered in determining the reasonableness of costs.

(i) Number, type and size of aircraft needed (involved in this determination are matters such as the number and physical aspects of locations to which flights are required, distances to these locations, number of passengers to be carried and frequency of flights).

(ii) The appropriateness of the method of acquisition, i.e., purchase, lease, or charter.

(iii) Whether, when the contractor has more than one type or size of aircraft, that available aircraft best suited to the requirements of each individual trip was used.

(4) Where the need for contractor owned, leased or chartered aircraft has been demonstrated, optimum use of such aircraft, rather than scheduled commercial service, should be made where a cost advantage will result to the Government.

§ 15.205–47 Economic planning costs.

(a) (CWAS): This category includes costs of generalized long-range management planning which is concerned with the future overall development of the contractor's business and which may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business.

(b) (CWAS): Economic planning costs are allowable as indirect costs to be properly allocated.

(c) (CWAS–NA): Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this provision.

§ 15.205–48 Automatic data processing equipment (ADPE) leasing costs (CWAS).

(a) This section is applicable to all leased ADPE, as defined in § 1.201–29 of this chapter, except as components of an end item to be delivered to the Government. (Allowability of costs related to contractor-owned ADPE are governed by other provisions of this subpart.)

(b) (1) If the contractor leased ADPE but cannot demonstrate, on the basis of the facts existent at the time of the decision to lease or to continue leasing and documented in accordance with paragraph (d) of this section, that leasing will result in less cost to the Government over the anticipated useful life (as those terms are explained in paragraph (c) of this section), then rental costs are allowable only up to the amount that the contractor would be allowed had he purchased the ADPE.

(2) Furthermore, the costs of leasing ADPE are allowable only to the extent that the contractor can annually demonstrate in accordance with paragraph (d) of this section that:

(i) They are reasonable and necessary for the conduct of his business in light of such factors as the contractor's requirements for ADPE, costs of comparable facilities, the various types of leases available and the provisions of the rental agreement;

(ii) They do not give rise to a material equity in the facilities (such as an option to renew or purchase at a bargain rental or price) other than that normally given to industry at large but represent charges only for the current use of the equipment including but not limited to any incidental service costs such as maintenance, insurance, and applicable taxes; and

(iii) If the total cost of leasing the ADPE is to be reimbursed under one or more cost-reimbursement type contracts, or if the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total leasing cost is to be allocated to cost-reimbursement type contracts, the approval of the contracting officer was obtained for the leasing arrangement (see §§ 3.1100 and 15.107 of this chapter).

(3) Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the ADPE, except where it is determined that leasing was the appropriate method of acquisition, and the sale and leaseback (i) immediately followed purchase of the ADPE and results in rental to the Government lower than rental under any other reasonably available leasing arrangements, or (ii) is otherwise in the best interests of the Government.

(4) ADPE which is transferred (by purchase or lease) between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be treated in accordance with § 15.205–22(e).

(c) (1) An estimate of the anticipated useful life of the property may represent the application life (utility in a given function), technological life (utility before becoming obsolete in whole or in part), or physical life utility before physically wearing out), depending upon the facts and circumstances and the particular facilities involved. Therefore, each case must be evaluated individually. In estimating anticipated useful life, the contractor may use the application life if he can clearly demonstrate that the facility has utility only in a given function and the duration of the function can be determined. Technological life may be used by the contractor if he can demonstrate that existing facilities must be replaced because of:

(i) Specific program objectives or contract requirements which cannot be accomplished with the existing facilities,

(ii) Cost reductions which will produce identifiable savings in production or overhead costs,

(iii) Increase in workload volume which cannot be accomplished efficiently by modifying or augmenting existing facilities, or

(iv) Consistent pattern of capacity operation (2½–3 shifts) on existing facilities.

Technological advances per se will not justify replacement of existing facilities before the end of their physical life if such existing facilities will be able to satisfy future requirements or demands.

(2) In estimating the least cost to the Government for such useful life, the cumulative costs that would be allowed if the contractor owned the property should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purposes of this comparison, the costs of ADPE include but are not limited to the costs of operation, maintenance, insurance, depreciation, and rental, and the cost of machine services, as applicable.

(d) The contractor's justification, under paragraph (b) of this section, of his leasing decisions shall consist of but is not limited to the following supporting data, prepared prior to acquisition:

(1) Analysis of utilization of existing ADPE;

(2) Application of the criteria in paragraph (b) of this section;

(3) Specific objectives or requirements, generally in the form of a data system study and data system specification;

(4) Solicitation of proposals from from qualified sources based on the data system specification;

(5) Proposals received in response to the solicitation, and reasons for selection of the equipment chosen and for the decision to lease.

The contractor's annual justification, under paragraph (b) of this section, of his decision to retain or change his existing ADPE capability and the need to continue leasing that capability shall consist of but is not limited to current data as specified in subparagraphs (1) through (3) of this paragraph.

PART 16—PROCUREMENT FORMS

17. Sections 16.102–2(c)(2)(xii) and 16.503–6(a) are revised to read as follows:

§ 16.102–2 Award/Contract (Standard Form 26).

* * * * *

(c) * * *

(2) * * *

(xii) A commercial warranty clause may be used in accordance with § 1.324–4 of this chapter.

* * * * *

§ 16.503–6 Modification of master contracts.

(a) Since master contracts prescribe the terms and conditions under which contractors submit bids and competitive quotations for vessel repair work, it is essential that the provisions of all outstanding master contracts be kept uniform. It is also necessary that master contracts be kept up to date and reflect changes in statutes, Executive orders, and procurement regulations applicable to vessel repair work. The DD ASPR Form 731 will be revised periodically, not more frequently than annually, to incorporate all changes made necessary by ASPR revisions unless revision is required by statute or Executive order. All outstanding master contracts shall be replaced using the latest revised form, effective as to all job orders issued on or after 60 days after the promulgation of such revision. Pending revision of DD ASPR Form 731, the clause set forth in § 11.302(e) of this chapter shall be inserted in master contracts in accordance with § 11.302(c).

* * * * *

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

18. In § 30.8, paragraph I–102 is revised to read as follows:

§ 30.8 Appendix I—Preparation, Reproduction and Distribution of Material Inspection and Receiving Report (MIRR) (DD Forms 250 and 250c).

* * * * *

I–102 Forms supply. Contractors may obtain from the contract administration office, upon request, and at no cost, MIRR forms required for use in connection with Government contracts. Contractors may print their own forms: *Provided,* That the format and dimensions (8½" x 11") are identical to the MIRR forms published by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

* * * * *

[Rev. 25, ASPR, Oct. 1, 1967] (Sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68–236; Filed, Jan. 8, 1968; 8:45 a.m.]

Chapter V—Department of the Army

SUBCHAPTER B—CLAIMS AND ACCOUNTS

PART 536—CLAIMS AGAINST THE UNITED STATES

Claims Under Article 139, Uniform Code of Military Justice

Section 536.25 is revised to read as follows:

§ 536.25 Claims under Article 139, Uniform Code of Military Justice.

(a) *Statutory authority.* The authority for this section is Article 139, Uniform Code of Military Justice (10 U.S.C. 939) which provides for redress of damage to property willfully damaged or destroyed, or wrongfully taken by members of the Armed Forces of the United States.

(b) *Purpose.* This section sets forth the standards to be applied and the procedures to be followed in the processing of claims cognizable under Article 139, Uniform Code of Military Justice.

(c) *Scope.* This section applies to claims for damage to, or loss or destruction of, property owned or in the lawful possession of an individual, a business, a charity, a State or local government, or a service member, that has been willfully damaged or destroyed or wrongfully taken by military personnel of the Army.

(d) *Definitions*—(1) *Willful damage.* Damage which is inflicted intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from damage which is caused thoughtlesly or inadvertently as in simple negligence.

(2) *Wrongful taking.* Any unauthorized taking or withholding of property, not involving breach of contractual or fiduciary relationships, with intent to deprive the owner or person in lawful possession of his property temporarily, permanently, or for an indefinite period.

(3) *Board of officers.* The term "board of officers" as used in this section includes an investigating officer appointed under the provisions of §§ 519.1–519.5 of this chapter.

(e) *Claims payable.* Claims payable under Article 139, Uniform Code of Military Justice, and this section are limited to—

(1) Those for damage to or loss or destruction of property caused by riotous, violent, and disorderly conduct, or acts of depredation, by a member or members of the Army, acts showing such reckless and wanton disregard of the property rights of others that willful damage or destruction may reasonably be implied, and

(2) Claims for property wrongfully taken. A loss through larceny, forgery, embezzlement, fraud, misappropriation, and similar offense is compensable if a wrongful taking of property is involved.

(3) Claims for damage to or loss or destruction of property that result from an act or omission that occurred outside the scope of a member's employment which are cognizable under §§ 536.12–536.24b, 536.26, 536.27, or 536.161–536.171 may be processed under this section, in whole or in part, if specific authority has been obtained from the responsible claims supervisory authority (§ 536.4a), or the Chief, U.S. Army Claims Service.

(f) *Claims not payable.* The following claims are not compensable under this section:

(1) Claims payable under other regulations, except as provided in paragraph (e) (3) of this section.

(2) Claims resulting from simple negligence.

(3) Claims submitted by subrogees.

(4) Claims for personal injury or death.

(5) Any portion of a claim covered by insurance, regardless of whether claim is made against the insurer.

(6) Claims resulting from acts or omissions of military personnel while acting within the scope of their employment.

(7) Claims for damages or losses in which the negligence or fault of the claimant, his employee or his agent contributed to the damage or loss.

(g) *Limitations on application*—(1) *Time limitations.* In order for a claim to be considered under this section, a complaint must be submitted within 60 days of the date of the incident out of which the claim arose, unless the commander acting on the report determines that good cause has been shown for the delay in making complaint. The commander's determination that good cause has not been shown is final.

(2) *Limitation on amount of assessment.* No assessment in excess of $250 will be made against the pay of any one offender for a single act or incident, without approval of The Judge Advocate General or his designee.

(3) *Only direct damages considered.* Assessment will be made only for direct damages. Indirect, remote, or inconsequential damages will not be considered under this section.

(h) *Procedure*—(1) *Action by claimant.* Any person who believes that his property has been willfully damaged or wrongfully taken by a member or members of the Armed Forces of the United States may complain, orally or in writing, to the military organization or unit of the offending member or members or the nearest Army installation. The complaint may be accompanied by a claim for damages. Such claim should be in writing, in triplicate, signed by the claimant or his authorized representative, and asserted in an amount certain. The claim may be regarded as the complaint.

(2) *Voluntary restitution.* In many instances, members of the military services who cause damage through their off-duty activities welcome an opportunity to make restitution without the complainant's demand for compensation becoming a matter of official concern. Nothing in Article 139 or this section prevents an offender from making a mutually satisfactory arrangement with an injured party for restitution. Acceptance by the complainant of payment by the offender or offenders of an amount in full satisfaction and final settlement of the matter bars further recovery under this section. Any amount paid by an offender in partial satisfaction of the claim will be deducted from the amount approved by the commanding officer.

(i) *Conditions of payment.* Prior to payment of any claim within this section, each of the following conditions must be fulfilled:

(1) The claim is in writing and for a definite amount.

(2) The complaint to which the claim relates was presented within 60 days of the incident or good cause for the delay is shown.

(3) The damage to or loss or destruction of the property was not covered by insurance.

(4) The amount of the damage, loss, or destruction has been determined.

(5) The claim relates to propery other than property of the Government.

(6) The claim did not result from simple negligence.

(7) The property was willfully damaged or destroyed, or wrongfully taken by a member or members of the Army.

(8) The claim was not presented by a subrogee.

(9) The negligence or fault of the claimant, his employee or agent, did not contribute to the cause of the incident from which the claim arose.

(10) Payment was recommended by the board of officers and was approved personally by the offender's commanding officer.

(11) The staff judge advocate determined that the proceedings of the board were legally sufficient.

(12) The commanding officer ordered a stoppage of pay.

(13) The assessment against each offender does not exceed $250, except as approved by The Judge Advocate General.

[AR 27–27, Nov. 10, 1967]
(Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68–237; Filed, Jan. 8, 1968; 8:46 a.m.]

Title 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

PART 1602—RECORDS AND REPORTS

Apprenticeship and Labor Organization Reporting and Recordkeeping Requirements

Pursuant to the authority vested in it by section 709(c) of Title VII of the Civil Rights Act of 1964, 78 Stat. 263, 42 U.S.C.A. section 2000e et seq., the Equal Employment Opportunity Commission hereby amends Title 29, Chapter XIV, Part 1602 of the Code of Federal Regulations by changing the words, "Spanish American," in paragraph (b) of § 1602.20 to read "Spanish Surnamed American."

[SEAL] CLIFFORD L. ALEXANDER, JR.,
Chairman.

JANUARY 3, 1968.

[F.R. Doc. 68–266; Filed, Jan. 8, 1968; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 27]

BONA FIDE SPOT MARKETS AND SPOT MARKETS FOR CONTRACT SETTLEMENT PURPOSES

Notice of Proposed Rule Making

Notice is hereby given, in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Consumer and Marketing Service is considering amendment of § 27.93 and § 27.94 of the Regulations for Cotton Classification Under Cotton Futures Legislation (7 CFR Part 27, Subpart A) to remove New Orleans, La., and Charleston, S.C., from the list of bona fide spot markets (§ 27.93) and from the list of spot markets for contract settlement purposes (§ 27.94 (a) and (b)), wherever they now appear therein, and add Greenwood, Miss., to § 27.94(a) and Greenville, S.C., to § 27.94(b), pursuant to authority contained in the cotton futures provisions in sections 4862 and 4863 of the Internal Revenue Code of 1954 (68A Stat. 581, 582. 26 U.S.C. 4862. 4863).

Statement of considerations. Cotton is no longer traded in such volume and under such conditions in the New Orleans, La., and Charleston, S.C., markets as cutomarily to reflect accurately the value of spot cotton according to information available to the Department. Reported cotton purchases in New Orleans amounted to 28,800 bales in the 1966–67 crop year and 25,400 in the previous year. Reported purchases in Charleston totaled about 1,000 bales last season compared with 200 the year before. If New Orleans and Charleston are removed from the list of bona fide spot cotton markets they will be replaced on the list of spot markets for contract settlement purposes. Greenwood, Miss., has been recommended by representatives of the cotton industry as a replacement for New Orleans and Greenville, S.C., as a replacement for Charleston on the list of spot markets for contract settlement purposes. Both Greenwood, Miss. and Greenville, S.C., are currently on the list of bona fide spot markets. Reported cotton purchases in Greenwood amounted to 883,100 bales in the 1966–67 crop year and 666,800 in the previous year. Reported purchases in Greenville totaled about 893,200 bales last season compared with 338,400 the year before.

It is proposed that these amendments would be made effective March 1. 1968.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them in duplicate with the Office of the Hearing Clerk, U.S. Department of Agriculure, Washington, D.C. 20250, not later than 30 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice of rule-making shall be made available for public inspection in said office during regular business hours and in a manner convenient to the public business (7 CFR 1.27).

Done at Washington, D.C., this 4th day of January 1968.

G. R. GRANGE,
Deputy Administrator, Marketing Services.

[F.R. Doc. 68-315; Filed, Jan. 8, 1968; 8:52 a.m.]

[7 CFR Part 907]

HANDLING OF NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Expenses and Rate of Assessment for 1967–68 Fiscal Year

Consideration is being given to the following proposals submitted by the Navel Orange Administrative Committee, established under Marketing Agreement No. 117, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof: (1) That the expenses that are reasonable and likely to be incurred by the Navel Orange Administrative Committee during the period from November 1, 1967, through October 31, 1968, will amount to $260,000 and (2) that there be fixed, at $0.02 per carton of oranges, the rate of assessment payable by each handler in accordance with § 907.41 of the aforesaid marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file same in quadruplicate with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: January 4, 1968.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68-316; Filed, Jan. 8, 1968; 8:52 a.m.]

[7 CFR Part 929]

[Docket No. AO-341-A2]

HANDLING OF CRANBERRIES GROWN IN CERTAIN STATES

Proposed Amendments to the Marketing Agreement and Order

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the town hall, Wareham, Mass., beginning at 9 a.m., local time, February 5, 1968, in the Mount Laurel Room, Holiday Motel, Exit 4, New Jersey Turnpike, Moorestown, N.J., beginning at 10:30 a.m., local time, February 7, 1968, in the Court House Auditorium, Wood County Courthouse, 400 Market Street, Wisconsin Rapids, Wis., beginning at 9 a.m., local time, February 9, 1968, and in the Willapa Grange Hall, Grayland, Wash., beginning at 9 a.m., local time, February 13, 1968, with respect to proposed further amendments of the marketing agreement and Order No. 929 (7 CFR Part 929), hereinafter referred to as the "marketing agreement" and "order," respectively, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The proposed amendments have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and to any appropriate modifications thereof.

The following amendments to the marketing agreement and order have been proposed by the Cranberry Marketing Committee, the administrative agency established pursuant to the marketing agreement and order:

1. Revise § 929.6 *Fiscal period* to read as follows:

§ 929.6 Fiscal period.

"Fiscal period" is synonymous with "fiscal year" and "crop year" and means the 12-month period beginning September 1 of one year and ending August 31 of the following year.

2. Add a new § 929.13 reading as follows:

§ 929.13 Base quantity.

"Base quantity" means the number of pounds of cranberries established for a grower by the committee pursuant to § 929.48.

3. Add a new § 929.14 reading as follows:

§ 929.14 Marketable quantity.

"Marketable quantity" means for a crop year the number of pounds of cranberries necessary to meet the total market demand and to provide for an adequate carryover.

4. Add a new § 929.15 reading as follows:

§ 929.15 Annual allotment.

"Annual allotment" means for a grower in a particular crop year a quantity equivalent to the number of pounds of cranberries determined by multiplying the base quantity of such grower by the allotment percentage established pursuant to § 929.49 for such crop year.

5. Add a new § 929.16 reading as follows:

§ 929.16 Established cranberry acreage.

"Established cranberry acreage" means acreage which is presently producing cranberries on a commercial basis or acreage which has been recently planted or will be planted prior to August 1, 1968, to produce cranberries on a commercial basis.

§ 929.21 [Amended]

6. Amend § 929.21 *Term of office* by deleting therefrom "August 1 and ending on the last day of July" and substituting therefor "September 1 and ending on the following August 31."

§ 929.22 [Amended]

7. Amend § 929.22 *Nomination* by deleting "July 15" therefrom and substituting therefor "July 1."

8. Redesignate § 929.50 as § 929.46 and revise it to read as follows:

§ 929.46 Marketing policy.

(a) Each year prior to May 1 the committee shall estimate the marketable quantity for the following crop year.

(b) Each crop year prior to making any recommendations pursuant to subparagraphs (7) and (8) of this paragraph, or § 929.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the crop year. Such marketing policy shall contain the basis therefor and information relating to:

(1) The estimated total production of cranberries;

(2) The expected general quality of such cranberry production;

(3) The estimated carryover, as of September 1, of frozen cranberries and other cranberry products;

(4) The expected demand conditions for cranberries in different market outlets;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) The recommended desirable total marketable quantity of cranberries, including a recommended adequate carryover into the following crop year of frozen cranberries and other cranberry products;

(8) Regulation pursuant to § 929.52 expected to be recommended by the committee during the crop year together with its recommendations of the free and restricted percentages; and beginning with 1974–75 crop year, the recommended allotment percentage, if any, for the crop year; and

(i) Other factors having a bearing on the marketing of cranberries.

9. Add a new § 929.47 reading as follows:

§ 929.47 Preliminary regulation.

(a) Beginning with the 1968–69 crop year, and continuing for each crop year thereafter through August 31, 1974, no handler shall handle, as the first handler thereof, cranberries purchased by him from a grower or acquired by him for handling for the account of a grower until he has determined the identity of the grower and the quantity of cranberries attributed to such grower. The handler shall furnish such information to the committee at such times and in such forms as the committee, with the approval of the Secretary, may request.

(b) So that each producer may qualify for a base quantity pursuant to § 929.48, the committee shall furnish each producer early in each calendar year, a form to be filed with the committee whereon the producer reports the location of his bog(s), the acreage he intends to harvest for cranberries, and such other information as the committee needs to establish a base quantity for such producer.

10. Add a new § 929.48 reading as follows:

§ 929.48 Base quantities.

(a) *Determination of base quantities.* (1) Upon the Secretary finding not later than March 1, 1974, that the six crop years 1968–69 through 1973–74 constitute a representative period in terms of production of cranberries for market from cranberry producing acreage established prior to August 1, 1968, and the consequent producer sales of such cranberries, a base quantity shall be computed not later than May 1, 1974, for each qualified grower which shall be, except as otherwise provided in subparagraph (3) of this paragraph, a quantity of cranberries equal to that obtained by multiplying the grower's established cranberry acreage as of February 1, 1974, established prior to August 1, 1968, by the average of his average per acre sales for the 2 crop years, within the aforesaid period, during which his greatest sales were made: *Provided,* That if such acreage was not under control of such grower during the entire period 1968–69 through 1973–74, the grower having control on February 1, 1974, shall be issued a base-quantity on the basis of sales made from such acreage.

(2) In accordance with this paragraph (a) and based on reports of handlers, certifications by growers, and other information, the committee shall establish each grower's base quantity and, except as hereinafter provided, assign such base quantity to such grower.

(3) Beginning with January 1, 1966, and through the crop year 1973 if a grower loses cranberry acreage due to unusual circumstance such as any power of eminent domain during the period, he shall be permitted to relocate cranberry acreage within 4 years from time of loss that will produce in units equal to that lost and the committee shall until such relocated acreage reaches maturity compute a base quantity for such grower equal to (i) the amount likely to be produced from the new acreage, as determined by the committee, or (ii) the average quantity marketed from a like acreage in the area of relocation during the 2 crop years of the aforesaid period when such average was highest.

(4) The committee, with the approval of the Secretary, shall adopt rules and regulations as necessary to implement the provisions of this section.

(b) *Additional base quantities.* Each crop year beginning in 1974–75, if it appears that the market demand for cranberries exceeds the aggregate base quantities, the committee shall consider the need for granting, and if appropriate, grant, with the approval of the Secretary, additional base quantities, to either a new grower or to existing growers for the purpose of satisfying the increased market demand for cranberries. Such additional base quantities shall be granted, insofar as practicable, on the following basis:

(1) To increase all existing base quantities; and

(2) To increase the base quantity of existing growers and establish a base quantity for new growers as a result of new acreages to be planted to cranberries to meet new demands.

11. Add a new § 929.49 reading as follows:

§ 929.49 Marketable quantity, allotment percentage, and annual allotment.

(a) *Marketable quantity and allotment percentage.* Beginning with the 1974–75 crop year, if the Secretary finds from the recommendation of the committee or from other available information that limiting the quantity of cranberries that may be purchased from, or handled on behalf of, growers would tend to effectuate the declared policy of the act, he shall determine and establish the marketable quantity for such crop year. The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's base quantity, established pursuant to § 929.48. The allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' base quantities. Except as provided in paragraph (c) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment. In any crop year beginning with the crop year commencing September 1, 1974, in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to any year. In the event it is found that the market demand is greater than the marketable quantity previously set, the committee

may recommend and the Secretary may increase such quantity.

(b) *Issuance of annual allotments.* The committee shall require each grower to qualify for his allotment by filing with the committee, on or before February 1, 1974, and by the same date each year thereafter, a CMC form wherein the grower states such information as where he intends to produce his annual allotment, the acreage he intends to harvest, changes in location, if any, and such other information, including a copy of any lease agreement, as is necessary to administer this part. On or before May 1, 1974, and by the same date each year thereafter, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (a) of this section to the grower's base quantity.

(c) *Filling deficiencies in annual allotments.* When a grower, beginning in 1974, does not produce cranberries equal to his computed annual allotment, he may (1) fill any deficit in his annual allotment by obtaining cranberries from another grower who has produced a quantity of cranberries in excess of his computed annual allotment, (2) transfer any unused portion of his allotment to another grower, or (3) transfer his unused allotment to a handler who shall allocate the unused allotment to another grower or growers with insufficient allotment. As a condition to any such transfer each grower or handler shall furnish a full report of each such transaction to the committee, including the names of the parties, the quantity involved in the transaction, and such other information as will enable the committee to administer this provision. The committee, with the approval of the Secretary, may modify the provisions with respect to filling deficiencies.

(d) A grower or handler with any deficiency of allotment should notify the committee of such deficiency in order to provide adequate marketable cranberries to meet the market demand.

As a service to growers and handlers, the committee shall act as a clearing house of information of producers with deficits in production and the availability of cranberries in excess of salable. Such information shall be available at the committee office to any producer or handler upon request.

12. Add a new § 929.50 reading as follows:

§ 929.50 Transfers.

(a) *Of location.* A grower may transfer from the acreage to which the cranberries are attributed on which his base quantity was established to other land which he owns or leases, except if he is leasing such base quantity acreage no transfer shall be approved unless the owner of such land consents to the transfer. Notwithstanding the date of August 1, 1968, § 929.48(a), the land to which the grower's annual base quantity has been transferred may be planted at any time. The committee shall, by such means as are provided in § 929.49(b), obtain information as to the location(s) where each grower intends to produce his base quantity.

(b) *To another grower.* A grower may transfer all or part of a base quantity from himself to another grower, but if the transferor is not the owner of the producing acreage, the consent of the owner shall be required prior to the committee's granting an annual allotment on such base quantity. Also, such a transfer shall be recognized only upon the transferor and transferee notifying the committee in writing and the transferee submitting evidence of capability to produce and harvest the annual base quantity referable thereto.

13. Revise paragraph (d) of § 929.68 *Termination* to read as follows:

§ 929.68 Termination.

* * * * *

(d) The Secretary shall conduct a referendum during the month of May 1975, to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum during the month of May of every fourth year thereafter.

The Fruit and Vegetable Division, Consumer and Marketing Service, has proposed that consideration be given to making such other changes in the marketing agreement and order as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of the notice of hearing may be obtained from the Director, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated: January 4, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-317; Filed, Jan. 8, 1968; 8:52 a.m.]

[7 CFR Part 1005]

[Docket No. AO 177-A30]

MILK IN TRI-STATE MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Tri-State marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Charleston, W. Va., on August 22 and 23, 1967, pursuant to notice thereof which was issued July 12, 1967 (32 F.R. 10449).

The material issues on the record of the hearing relate to:

1. Class I price;
2. Class II price;
3. Butterfat differentials; and
4. Pooling standards.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Class I price.* The Class I price differential for the Charleston-Huntington district should be $1.55 and for the Gallipolis-Scioto and Athens districts, $1.47. The latter two districts would be combined and designated the "Athens-Scioto" district.

The Tri-State Class I price is the basic formula price for the preceding month plus a fixed differential (and plus an additional 20 cents through April 1968), subject to a supply-demand adjustment. The present Class I differentials are $1.60 for the Charleston-Huntington district, $1.50 for the Gallipolis-Scioto district, and $1.40 for the Athens district.

Two cooperatives proposed a Class I differential for all districts of $1.52, the weighted average Class I differential for the entire market for January 1965 through June 1967. Their proposal would not set aside the 20-cent price increase that is now effective through April 1968. Three Charleston-Huntington district handlers also proposed a $1.52 differential for all districts.

The two producer groups, which supply milk primarily to handlers in the Charleston-Huntington district, claimed that the present pricing arrangement is causing such handlers to lose Class I sales to handlers in the lower-price districts. The cooperatives stated that if this situation continues the decreased demand by such handlers for Class I milk will require producers to move their milk to more distant outlets at a greater hauling cost. They argued that a single differential for the market would place Charleston-Huntington handlers in a more favorable competitive position for Class I sales. This position was supported by proponent handlers who testified that the present pricing scheme places them at a competitive disadvantage with competing handlers in the lower-price districts.

A third producer group proposed retaining the present differential of $1.60 for the Charleston-Huntington district and providing a $1.52 differential for the Athens and Gallipolis-Scioto districts. A handler in the latter district suggested that whatever differentials are provided for the Athens and Gallipolis-Scioto districts they be the same and at a level that is 15 cents lower than the Charleston-Huntington district Class I differential.

Handlers in the Athens and Gallipolis-Scioto districts opposed a marketwide Class I differential of $1.52. They argued that an increase in their Class I price would place them at a competitive disadvantage with handlers in nearby Federal order markets such as Columbus, Cincinnati, and Miami Valley where the Class I differentials are $1.25, $1.34, and $1.24, respectively. A cooperative in the Appalachian market (where a $1.93 differential is applicable) opposed any decrease in the Charleston-Huntington district price, claiming that it would give Tri-State handlers an additional price advantage over Appalachian handlers in the cost of milk sold in overlapping sales areas. Wheeling handlers supported a marketwide Class I differential of $1.52, contending it would provide a better price alignment between the Tri-State market and the Wheeling market, where a $1.73 differential is applicable. In this regard, it should be noted that in 1966, Class I price differences between these other markets and nearby districts in the Tri-State market were either eliminated or minimized because of supply-demand adjustments to the Class I prices. These 1966 adjustments averaged plus 10 cents for Tri-State, plus 29 cents for Columbus, plus 18 cents for Cincinnati and Miami Valley, and minus 25 cents for Wheeling. The Appalachian order does not provide for supply-demand adjustments.

There is some overlapping of distribution from pool plants in the three Tri-State districts. The sales areas of plants at Athens and Marietta, Ohio, in the Athens district and at Charleston and Beckley, W. Va., in the Charleston-Huntington district, for example, encompass much of the same territory within the marketing area. Marietta and Athens handlers make sales as far south as Beckley, a distance of over 150 miles. A Beckley handler, on the other hand, distributes milk as far north as Marietta. Sales from other pool plants, though not as extensive, cover widespread areas in one or more districts and are in competition with sales of handlers who distribute milk throughout most of the marketing area. With the continuing improvement of highways in this market, it is reasonable to expect a greater overlapping of sales areas in the future.

In this situation, the present pricing scheme under the Tri-State order is no longer appropriate. Handlers emphasized particularly the effect of Class I price differences on their bids for sales contracts with chain stores located over a relatively wide geographic area.

Class I differentials of $1.55 for the Charleston-Huntington district and $1.47 for the Athens-Scioto district would lessen the difference in prices now applicable to competing Tri-State handlers. This 8-cent spread between the differentials for the two districts, as proposed by one producer group, will provide a reasonable alignment of prices within the market. This price arrangement will lower the Class I prices for the Charleston-Huntington and Gallipolis-Scioto districts five cents and three cents, respectively, and will increase the Class I price for the Athens district 7 cents. Had the proposed differentials been in effect in 1966, they would have resulted in approximately the same returns from Class I sales of all producer milk in the market as the present differentials provided.

With this reduction from 20 cents to 8 cents in the maximum price difference between districts, there would be no need to maintain three pricing districts. Combining the present Gallipolis-Scioto and Athens districts, as proposed by a handler and a producer group associated with that area, will best effectuate a pricing arrangement that is consistent with current marketing conditions. There was no opposition to merging the two districts.

The current supply of producer milk does not justify a higher Class I price differential for the market. In recent periods, producer deliveries have become proportionately greater relative to the Class I needs of Tri-State handlers. For the 12 months of November 1964–October 1965, 86 percent of the producer milk in the market was Class I. Class I utilization during each of the two succeeding 12-month periods was 81 percent. Milk supplies are now in reasonable balance with the Class I needs of the market, as indicated by the zero supply-demand adjustments from March through December 1967.[1]

The differentials herein proposed should not adversely affect the maintenance of adequate supplies at Charleston-Huntington district plants. Historically, producer deliveries to these plants relative to their Class I needs have been less than to plants in other districts. Charleston-Huntington handlers stated, however, that milk supplies relative to their Class I needs, currently and prospectively, are more adequate than in the past.

The higher Class I price at Charleston-Huntington plants relative to that at plants in other districts under the order has been necessary to attract adequate supplies to these plants. A Class I price at Charleston-Huntington plants the same as that in all other districts would have tended in the past to impair the maintenance of an adequate supply of milk for Charleston-Huntington handlers. Although such handlers may not have any difficulty under the present pricing arrangement in competing with Athens district handlers for milk supplies, the complete removal of the present 20-cent price difference in the market could seriously affect the maintenance of a supply for Charleston-Huntington plants.

2. *Class II price.* (a) The Class II price should continue to be the basic formula price (Minnesota-Wisconsin price series) for the month.

Two proprietary handlers proposed that the Class II price be either the Minnesota-Wisconsin price or a butter-powder formula price plus 10 cents, whichever is lower. They stated that since this proposed Class II price is applicable under some nearby Federal orders, it should be applicable under the Tri-State order. Producer groups in the market opposed the adoption of the proposal.

The average Class II price under the Tri-State order was $3.92 in 1966 and $3.99 in the first 10 months of 1967. Under the handlers' proposal, had it been in effect, the Class II price would have been 16 cents less in 1966 and 7 cents less in the January–October period in 1967. During this time, the butter-powder formula price would have been the effective Class II price in all months except one.

The Class II price should be at a level at which producer milk not needed for Class I purposes may be marketed. It should not, however, be at a price so low that it would encourage handlers to associate milk with the pool solely for manufacturing purposes. Neither should it be at a price that would return to producers less than the obtainable market value for such milk.

The record does not show that Tri-State producers are encountering any difficulty in marketing their reserve supplies at the present Class II price. The two handlers proposing the lower Class II price have extensive manufacturing operations. One uses substantial quantities of pooled milk in the manufacture of cottage cheese and ice cream; the other's principal Class II outlets are evaporating and condensing operations. Neither indicated that utilizing reserve supplies of pooled milk in his manufacturing operation is uneconomic at the present Class II price. Moreover, it was not shown that milk for manufacturing purposes was available from alternative sources at prices below the present Class II price.

Adoption of the handlers' proposal would result in a Class II price that would return to producers less than the obtainable market value for milk not needed for Class I use. The proposal is therefore denied.

(b) The price for producer milk used to produce cottage cheese should be the basic formula price for the month plus 15 cents. Milk so used would be classified as Class II–A. Milk used to produce cottage cheese is now classified as Class II and priced at the Class II (basic formula) price.

Producers proposed the additional 15-cent per hundredweight charge to handlers for producer milk used in cottage

[1] Official notice is taken of the market administrator's official announcements issued for the months of March through December 1967 which provide production, utilization and price data not available at the time of the hearing.

cheese. They maintained that the present Class II price does not represent the full value of producer milk used to make cottage cheese.

Handlers in the Tri-State market rely substantially on producer milk supplies for the production of cottage cheese. In 1966, such handlers used about 30 million pounds of milk in making this product. This represented 35 percent of the total Class II use of producer milk.

As previously indicated, producer milk disposed of in manufacturing uses should be priced under the order at a level which results in the orderly marketing of such milk. Within this concept, however, the price level should be that which will provide the highest possible returns to producers. If producer milk used in cottage cheese is priced to handlers at less than the cost of alternative supplies of cottage cheese or dairy products used for making cottage cheese, producers do not receive the full market value for their milk. On the other hand, if producer milk used in cottage cheese is priced higher than the alternative product cost, handlers might be discouraged from using producer milk in cottage cheese.

The major ingredient cost of cottage cheese is that for the skim milk. For the 12-month period of November 1966 through October 1967, the present order provisions resulted in an average Class II skim milk value of $1.40 per hundredweight. This was the average cost to handlers for producer skim milk which they used in making cottage cheese. An increase of 15 cents per hundredweight for producer milk used in cottage cheese, as proposed herein, would have raised the skim milk value to handlers during this period to $1.55. Based on a yield of 15 pounds of cottage cheese curd per hundredweight of skim milk, the ingredient cost of curd would have been increased by 1 cent per pound.

Handlers choosing not to use producer milk in making cottage cheese probably would use nonfat dry milk. Imported dry cottage cheese curd or manufacturing grade milk also could be used. However, there is no indication that Tri-State handlers have a dependable source for adequate quantities of manufacturing grade milk or dry cottage cheese curd for this purpose at prices less than that proposed herein.

Nonfat dry milk may be reconstituted for use in cottage cheese production. The price per pound of spray process nonfat dry milk in the Chicago area averaged 19.49 cents in the November 1966–October 1967 period.[2] With a yield of 8.5 pounds of nonfat dry milk per hundredweight of skim milk, the cost of nonfat solids would have been about $1.66 per hundredweight of skim equivalent. When the transportation cost for the nonfat dry milk is added, the cost is in excess of the cost of producer skim milk that would have resulted under the proposed pricing scheme.

Local producers thus represent the cheapest source of cottage cheese milk for Tri-State handlers. The 15-cent differential above the Class II price represents a reasonable return to producers for supplying on a regular basis Grade A milk for cottage cheese production.

There is no indication that the proposed Class II–A price would encourage Tri-State handlers to import cottage cheese from other markets or cause them to lose cottage cheese sales in the Tri-State market to handlers in other areas. The cost of transporting cottage cheese from distant areas to outlets in the Tri-State market would be expected to negate any price advantage that might be attributable to differences in the cost of milk used in the manufacture of cottage cheese.

3. *Butterfat differentials.* The Class I butterfat differential should be 12 percent of the Chicago butter price for the preceding month and the Class II (and Class II–A) butterfat differential should be 11.5 percent of the Chicago butter price for the current month. In 1966, these Class I and Class II butterfat differentials would have averaged 8 cents and 7.6 cents, respectively.

The present Class I butterfat differential, which averaged 8.5 cents in 1966, is the Class II butterfat differential for the preceding month plus 1 cent. The Class II butterfat differential is determined by subtracting 3 cents from the Chicago butter price for the month and multiplying the remainder by 0.119. This differential averaged 7.6 cents in 1966.

A number of fluid milk products (e.g., fortified skim milk) being sold in the Tri-State market have a proportionately higher percentage of nonfat solids than does unprocessed milk received from the farm. With a relatively high Class I butterfat differential, producers are not receiving their appropriate share of the Class I value represented by the nonfat solids portion of fluid milk products.

The lower Class I butterfat differential, which was proposed by producers, would allocate less value to the butterfat in Class II milk and more value to the skim milk portion. In 1966, when the Class I price averaged $5.59, the value of 3.5 pounds of butterfat in 100 pounds of milk was $2.98 (35 x 8.5 cents). The skim milk portion of such 100 pounds of milk was valued at $2.61.

The proposed Class I butterfat differential of 12 percent of the Chicago butter price would have valued the butterfat in 100 pounds of milk in 1966 at $2.80 (35 x 8 cents). This is 18 cents less than the value of the 3.5 pounds of butterfat in 100 pounds of milk under the Tri-State order in 1966. Had such a differential been in effect, however, the value of the skim milk portion of the milk would have been increased by 18 cents.

This proposed Class I butterfat differential has wide acceptance and is the Class I butterfat differential most applicable in other Federal orders.

The proposed change relating to the Class II butterfat differential merely simplifies the computation of this differential. The level of the differential would not be affected. This differential is commonly used in other Federal orders.

The Class II butterfat differential should be used in computing the value of milk classified as Class II–A, the classification proposed herein to apply to milk used in cottage cheese manufacture. This butterfat differential is now applicable in determining the value of milk used in the production of cottage cheese. There was no proposal to apply a different butterfat differential to such milk.

4. *Pooling standards.* The present basis on which a supply plant may qualify as a pool plant should not be changed.

To qualify for pooling under the order, a supply plant must ship in September, October, and November at least 50 percent, and in all other months at least 40 percent, of its Grade A receipts to pool distributing plants. A supply plant that is pooled in each of the months of September through March is accorded pool plant status in the following April through August period.

A cooperative proposed that the present 7-month period used for establishing automatic pool plant status be shortened to a 4-month period of September-December. It also proposed that the 50 percent shipping requirement for September be reduced to 40 percent.

This producer group supplies milk to a pool supply plant at Circleville, Ohio. The plant is the only supply plant that has been associated with the Tri-State market on a regular basis. This plant has been customarily relied upon by Tri-State handlers as a source of supplemental milk supplies for Class I use. It also manufactures milk which is surplus to the fluid needs of the market. Proponent contended that if the shipping requirements are not changed the Circleville plant may not be able to qualify regularly as a pool plant, thereby jeopardizing orderly marketing conditions in the market.

Other cooperatives opposed the proposal. They argued that lowering the shipping requirements could encourage the association of milk supplies with the market for manufacturing rather than fluid use, with a resulting decrease in blend prices paid producers regularly supplying the fluid needs of the market.

The present pooling standards for supply plants became effective November 1, 1966. The change at that time in the standards fully recognized the experience of the Circleville plant. The record does not indicate that there have been any developments since then that make the present standards inappropriate.

Shipping standards are the basis used for determining which supply plants are an integral part of the market and constitute a source of regular and dependable supplies for the market. They are intended to distinguish between plants meeting a reasonable standard of regular and customary service to the market and those which do not.

[2] Official notice is taken of "Federal Milk Order Market Statistics" issued in October, November, and December 1967 by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture, with respect to the Chicago area prices of nonfat dry milk.

Shipping requirements serve the added purpose of assuring that handlers engaged in bottling and distribution operations in the market are able to obtain milk from pool supply plants for their fluid milk requirements. Without such requirements, supply plants may tend to keep milk at their plants for manufacturing when it is to their advantage to do so. In this circumstance, milk supplies would be associated with the market for manufacturing rather than fluid purposes, and returns to producers supplying the Class I needs of handlers would be inappropriately lowered.

In view of the above, it is concluded that the present Tri-State order pooling standards for supply plants are reasonable. The cooperative's proposal is therefore denied.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order as amended regulating the handling of milk in the Tri-State marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. In § 1005.6, paragraph (c) is deleted and paragraph (b) is revised to read as follows:

§ 1005.6 Tri-State marketing area.

* * * * *

(b) "Athens-Scioto district" means all the territory within the boundaries of the following:

(1) Ohio counties of: Athens, Gallia, Meigs, Scioto, Jackson, and Washington;

(2) Townships of Beaver, Camp Creek, Jackson, Marion, Newton, Pee Pee, Scioto, Seal, and Union in Pike County, Ohio;

(3) West Virginia counties of: Jackson, Mason, Roane, and Wood; and

(4) Magisterial Districts 2, 3, and 8 in Lewis County, Ky.

(c) [Deleted]

2. Section 1005.27(j)(1) is revised to read as follows:

§ 1005.27 Duties.

* * * * *

(j) * * *

(1) The fifth day of each month, the Class I price and the Class I butterfat differential for the month and the Class II and Class II–A prices and butterfat differentials for the preceding month; and

* * * * *

3. In § 1005.41, paragraphs (a)(2) and (b)(1) are revised and a new paragraph (c) is added to read as follows:

§ 1005.41 Classes of utilization.

* * * * *

(a) * * *

(2) Not accounted for as Class II or Class II–A milk.

(b) * * *

(1) Skim milk and butterfat used to produce any product other than a fluid milk product or cottage cheese;

* * * * *

(c) *Class II–A milk.* Class II–A milk shall be skim milk and butterfat used to produce cottage cheese.

4. In § 1005.43, paragraphs (c)(1) and (3)(iv) and (d)(3) and (5) are revised to read as follows:

§ 1005.43 Transfers.

* * * * *

(c) * * *

(1) The transferring or diverting handler claims classification in Class II or Class II–A in his report submitted pursuant to § 1005.30;

* * * * *

(3) * * *

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk to the extent available and the remainder as Class II–A milk; and

(d) * * *

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, movements in bulk form shall be classified as Class II or Class II–A to the extent of the Class II or Class II–A utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

* * * * *

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified in a comparable classification as Class II or Class II–A; and

* * * * *

5. In § 1005.45(a), the introductory text of subparagraphs (3) and (4) and subparagraphs (5), (8)(i), and (10) are revised to read as follows:

§ 1005.45 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II and then Class II–A, the pounds of skim milk in each of the following:

* * * * *

(4) Subtract in the order specified below, from the pounds of skim milk remaining in Class II and/or Class II–A (beginning with Class II) but not in excess of such quantity:

* * * * *

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II and then Class II–A, the pounds of skim milk in inventory of fluid milk products at the beginning of the month;

* * * * *

(8) * * *

(i) In series beginning with Class II and then Class II–A, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class II–A utilization of skim milk announced for the month by the market administrator pursuant to § 1005.27(k) or the percentage that Class II and Class II–A utilization remaining is of the total remaining utilization of skim milk of the handler; and

* * * * *

(10) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II and then Class II–A. Any amount so subtracted shall be known as "overage";

* * * * *

6. In § 1005.51, paragraph (a)(1) is revised and a new paragraph (c) is added to read as follows:

§ 1005.51 Class prices.

* * * * *

(a) * * *

(1) Add $1.55 for plants in the Charleston-Huntington district and $1.47 for plants in the Athens-Scioto district, plus 20 cents for each district through April 1968. At a plant outside the marketing area add the amount applicable pursuant to this subparagraph at the location of the city hall of the following cities that is nearest such plant:

KENTUCKY

Ashland.	Pikeville.
Paintsville.	

OHIO

Athens.	Marietta.
Gallipolis.	Portsmouth.
Jackson.	

WEST VIRGINIA

Charleston.	Huntington.
Hinton.	Williamson.

* * * * *

(c) *Class II–A price.* The Class II–A price shall be the basic formula price for the month plus 15 cents.

7. In § 1005.52, paragraphs (a) and (b) are revised to read as follows:

§ 1005.52 Butterfat differentials to handlers.

* * * * *

(a) *Class I milk.* Multiply the butter price for the preceding month by 0.12.

(b) *Class II and Class II–A milk.* Multiply the butter price for the month by 0.115.

8. Section 1005.62(a)(1) is revised to read as follows:

§ 1005.62 Obligations of handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(1) The obligation that would have been computed pursuant to § 1005.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be valued at the Class II or Class II–A price if allocated to such class at the pool plant or other order plant and be valued at the weighted average price (or, in its absence, the uniform price) of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1005.60(e) and a credit in the amount specified in § 1005.74(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1005.30 similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1005.11(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

* * * * *

9. Section 1005.72(a)(2) is revised to read as follows:

§ 1005.72 Location differentials to producers and on nonpool milk.

(a) * * *

(2) An additional 8 cents at a pool plant at which the Athens-Scioto district Class I price is applicable.

* * * * *

Signed at Washington, D.C., on January 3, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-258; Filed, Jan. 8, 1968; 8:47 a.m.]

[7 CFR Part 1133]

[Docket No. AO 275-A17]

MILK IN INLAND EMPIRE MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Inland Empire marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the fifth day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary Statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Spokane, Washington, on July 25, 1967, pursuant to notice thereof which was issued July 13, 1967 (32 F.R. 10600).

The material issues on the record of the hearing relate to:

1. Plant definition.
2. Standards for qualifying pool plants.
3. Diversion provisions.
4. Classification and pricing.

Findings and Conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Plant definition.* The plant definition should be revised to exclude a reload facility.

Currently, a reload facility can meet the definition of a "plant" under the order, and such facility can be designated a pool supply plant if it makes qualifying shipments of milk to pool distributing plants. The Inland Empire Dairy Association proposed that the "plant" definition be revised to specifically exclude a reload point. There was no opposition to the proposal.

As used in the Inland Empire market, a reload point is primarily a facility at which milk is pumped from one tanker into another for delivery to distributing pool plants or to nonpool plants for manufacture into dairy products. The reload point has no storage or cooling facilities, which are characteristic functions of a plant facility. A reload point, as contrasted to an established plant, involves a comparatively small investment in physical facilities. Consequently, anyone wishing to exploit the pooling provisions of the order could do so at a minimum cost.

Proponents testified that defining a reload facility as a plant threatened the stability of the market. Since the amount of milk which may be diverted is directly related to the volume of producer milk received at pool plants, designating a reload point as a pool plant can increase substantially the amount which can be associated with the marketwide pool and then diverted to manufacturing plants. Under the present provision it is possible for milk acquired exclusively for manufacturing to become producer milk and share in the uniform price merely by passing through a reload point en route from the farm to the manufacturing plant.

This results in lowering the returns to those producers whose milk is regularly associated with the fluid market and on whom the market depends for a continuing and adequate supply of milk. This could lead to disorderly marketing and jeopardize the supply of milk for the market. No testimony was presented in support of continuing to define a reload point as a plant.

It is concluded that defining a reload point as a plant under the order does not contribute to orderly marketing for the area, particularly in view of the change in diversion limitations discussed below. Such a facility, therefore, should be excluded from the definition of a plant.

2. *Standards for qualifying pool plants.* The provisions for qualifying "pool distributing plants" should not be changed. The months for qualifying a pool supply plant should be revised.

(a) *Pool distributing plant.* The Inland Empire Dairy Association proposed that the in-area route distribution standards for pool distributing plants be changed to the lesser of 100,000 pounds or 10 percent of the total receipts of Grade A milk. The order now provides factors of 250,000 pounds and 20 percent. The purpose of the proposal is to regulate certain nonpool plants located in Montana and Idaho if they continue to expand Class I sales in the area.

In this connection, prior to the hearing, Class I sales had been decreasing for the market. For 1966, such sales were 1.7 percent under 1965 and for the first half of 1967 were about one percent under the first half of 1966. However, there was no testimony by interested parties that regulated handlers have lost Class I sales to the nonpool plants. Official notice is hereby taken of the monthly statistical summaries issued by the market administrator for the months of July through October 1967. They indicate that during this period, the quantity of producer milk in Class I increased about two percent over the same period of 1966.

Proponent testified that for May, June and July 1967, the two Montana nonpool plants paid $5.85 per hundredweight for milk containing 3.5 percent butterfat and used in products comparable to Class I under the order. The Inland Empire Class I prices for these months were $5.94, $5.94, and $5.97, respectively. Thus, proponent contended that the cost advantage to the nonpool handlers ranged between 9 and 12 cents per hundredweight. Proponent introduced no evidence concerning prices paid for milk by the Idaho nonpool plant.

The proposal was opposed by the operator of a Montana nonpool plant which has been a partially regulated distributing plant under the order since March 1962. It is located at Missoula, Mont., about 200 miles from Spokane, and the plant has been meeting the obligations for such plant under the terms of the order. The witness testified that if proponent's proposal were adopted, the Montana nonpool plant would be regulated by the order. About 97 percent of its Class I sales are made outside the marketing area.

In 1962–63, the Montana nonpool plant sold 3.98 percent of its producer receipts in the marketing area. For the first half of 1967, the total volume of sales distributed in the area by the nonpool plant was 15 percent greater than in the first half of 1966. However, the operator of the nonpool plant contended that this represented about 3 percent of its plant receipts. Sales have been and are confined principally to an area in Shoshone and Kootenai Counties.

The pooling qualification for a distributing plant is that the lesser of 250,000 pounds or 20 percent of its Grade A milk receipts must be distributed on routes in the marketing area during a month. The minimum factor of 250,000 pounds represented about 1.5 percent of the average monthly producer receipts for the market during the 6 months preceding the hearing. Since the nonpool plants did not qualify for pooling during this period, their distribution obviously was less than 1.5 percent of producer receipts for the market.

Class I sales disposition in the market is another way to evaluate the relationship of a nonpool plant to the market. In this connection, Class I utilization for the six months preceding the hearing averaged about 10.3 million pounds a month. One nonpool plant distributed up to 88,000 pounds of Class I milk on routes in the area for a single month. This represented about 0.85 percent of the monthly average Class I sales for the market.

This nominal distribution, both from the standpoint of producer receipts and Class I sales does not appear to have a disrupting effect on orderly marketing for the area.

Opponent contended that under prices established by the Montana Milk Control Board the plant has had little or no cost advantage over handlers regulated by the Inland Empire order. For the period March 1962 through February 1966 opponent's Class I prices were higher than those established by the Inland Empire order. No price data were introduced for the period March through December 1966. The handler witness testified that for the period January through June 1967, the Class I price at the nonpool plant averaged $5.85, which was 5 cents per hundredweight less than the average Class I price for the Inland Empire area during that period. The cost of transporting packaged milk from Missoula to the marketing area would offset any price advantage the Montana plant might have in the cost of its raw product.

It is concluded that the testimony indicates no disorderly marketing conditions which would warrant an amendment of the pooling requirements for distributing plants, as proposed. The present pooling requirements appear to be adequate under current marketing conditions. In addition, the integrity of the classification and pricing system has been safeguarded by the payment options provided for partially regulated distributing plants. The proposal to increase the pooling requirements, therefore, is denied.

(b) *Pool supply plant.* The pooling standards for supply plants should be revised to provide that a supply plant may acquire automatic pooling status based on its shipments during the months of September through November, rather than October through December.

At the present time there are no true supply plants serving the market, although as noted above, reload points have in the past been designated as such. The order, however, should continue to provide appropriate standards for designating pool supply plants, in the event such a plant might become associated with the market in the future.

The order presently provides that a supply plant to maintain pool status must ship 50 percent of its receipts to pool distributing plants during the months of October through December and 20 percent in the months of January through September. Any plant which qualifies as a pool supply plant in each of the months of October through December retains its pool status during the following months of January through September unless it notifies the market administrator that it desires that its pool status be terminated.

Since the original provisions became effective there has been a shift in the seasonal pattern of production on the market.

The months of September through November are normally the months when production is lowest in relation to Class I sales. During the period September through November 1966, the proportion of producer milk used in Class I averaged 70 percent. During the preceding December through August period, the proportion of producer milk used in Class I was 66 percent. Although this does not indicate a wide difference between the two periods, nevertheless, the difference is sufficiently significant to warrant changing the qualifying period to September through November, from the present October through December period.

The seasonal requirements provided herein for a supply plant which might become associated with the market are appropriate in view of the seasonal changes in production which normally occur. The provisions provided herein are deemed to provide reasonable and appropriate measure as to whether a plant would be sufficiently identified with the market without, at the same time, excluding from pool participation handlers whose plants were not regular and dependable sources of fluid milk supply for the market.

3. *Diversion provisions.* The producer milk definition should be amended to increase the percentage of milk which may be diverted and pooled. Of the total producer milk received at pool plants or diverted to nonpool plants the amount permitted to be diverted and pooled should be increased to 50 percent for the months of April through August, 30 percent for December through March and 20 percent for the remaining months.

The provisions of the present order which permit two or more cooperative associations to have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed in writing with the market administrator a request for such computation should be continued. If this practice is followed, the diversion provisions provided herein should be adequate to cover the needs of the market at all times of the year.

The order presently provides that diverted milk may be pooled in an amount limited to 15 percent of the total producer milk delivered to pool plants or diverted to nonpool plants in each of the

months of September through November, 25 percent for December through March, and August and 30 percent during April through July.

The Spokane Milk Producers proposed that the total quantity of diverted milk eligible for pooling in any month be changed to a quantity equal to the amount of milk delivered directly from the farm to a pool distributing plant. The association stated it was necessary that they be able to divert greater amounts of milk than may be diverted under the present provisions. Production for the market has increased faster than Class I sales and proponent is diverting an increasing proportion of producer receipts to nonpool plants for manufacturing.

A steady and continuing increase in production has occurred in recent years. For December 1966, production was about 8 percent above the same month a year ago, and for January 1967, was 7.2 percent higher than January 1966. For 1966, production was about 4 percent over 1965, and for the first half of 1967 was 4.4 percent over the first half of 1966.

Milk production by members of the Spokane Milk Producers Association has increased faster than for other producers supplying the market. For 1966, the members of the association produced 6.2 percent more milk than in 1965, and 10.2 percent more for the first half of 1967 then during the first half of 1966. For December 1966, member production was about 13.2 percent over the same month the previous year, and 14 percent higher for March 1967 than for March 1966.

For the market as a whole, about 40 million pounds of producer milk was utilized in Class III during 1966. This represented about 21 percent of total producer receipts. For the first half of 1967, about 24.6 million pounds were so utilized as compared with 19.8 million pounds during the first half of 1966.

Accompanying the production increase has been increased movements of bulk milk to nonpool plants for Class III use, principally by diversion. In 1965, 16.9 million pounds of milk were so moved. This increased to 26.6 million pounds for 1966. For the first half of 1967, about 19.6 million pounds of milk were moved to nonpool plants for Class III use compared with 13.4 million pounds for the same period a year ago.

There are no manufacturing facilities in the marketing area which are available for processing substantial quantities of reserve supplies of milk. Consequently, the association has had to market reserve milk to manufacturing plants some distance from the market, such as Tillamook, Oreg., and Caldwell, Idaho, which are about 300 and 370 miles, respectively, from Spokane. In order to assure producer status for its members who have regularly supplied the market, the association has had to make uneconomic movements of milk to pool plants. Milk that otherwise would have been transported directly from the farm to manufacturing plants had to be transported at additional expense to a pool distributing plant to qualify for diversion. Then, the remainder of it was moved from the pool plant to a nonpool manufacturing plant. The proposal is aimed at eliminating this.

It is evident from the percentage of milk which was diverted during the past year and for the first half of 1967, that the present diversions permitted by the order are no longer adequate in any month of the year. Therefore, the diversion percentage should be increased as provided herein. No testimony was received at the hearing in opposition to increasing the percentage of producer milk which may be diverted.

The order should continue to provide seasonal variation in the amount of milk which may be diverted. The marketing data introduced in evidence indicate that the change provided herein appropriately reflects the varying need to divert milk during different months of the year.

The month of August should be included in the period of maximum diversion because it is now more appropriately associated with those months with respect to the need to divert milk. For the period April through July proponent diverted an average of 25 percent of its member milk in 1965, and 43.9 percent for 1966. For the month of August, in those years, 26 percent and 40 percent, respectively, were diverted. A similar pattern is developing currently. Thus, the month of August appropriately may be included in the period of maximum allowable diversion.

4. *Classification and pricing.* The notice of hearing included proposals to revise the classification and pricing provisions of the order. No testimony was introduced either for or against the proposals, and the record contains no evidence that disorderly marketing conditions exist with respect to these provisions. Consequently, no change is provided herein concerning the classification and pricing provisions of the order.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof; will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order as amended regulating the handling of milk in the Inland Empire marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. Section 1133.7 is revised to read as follows:

§ 1133.7 Plant.

"Plant" means the land, buildings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment which is maintained primarily for receiving, processing or packaging of fluid milk and milk products. However, an establishment that is separate from the foregoing operating unit and used only for transferring bulk milk from one tank truck to another shall not be a plant under this definition.

2. In § 1133.8, paragraph (b) is revised to read as follows:

§ 1133.8 Pool plant.

* * * * *

(b) Any plant, hereinafter referred to as a "supply pool plant", from which there is forwarded to a pool distributing plant(s) 50 percent or more each of the skim milk and butterfat in its dairy farm supply of Grade A milk during the current month during the period of September through November, or 20 percent or more during the current month during the period December through August. Any such plant which has forwarded more than 50 percent of such receipts for the entire period of September through November shall be a pool plant for the months of December through August immediately following unless the operator of such plant files with the market administrator, prior to the first day of

any month(s), a written request to withdraw such plant from pool plant status for such month(s); and

* * * * *

3. In § 1133.12, paragraphs (c) (1) and (2) are revised to read as follows:

§ 1133.12 **Producer milk.**

* * * * *

(c) * * *

(1) A cooperative association may divert for its account, under paragraph (b) (1) of this section, the milk of any member producer eligible for diversion. The total quantity of milk so diverted, however, may not exceed 50 percent in the months of April through August, 30 percent in the months of December through March, and 20 percent in the months of September through November, of its total member milk received at all pool plants or diverted therefrom during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed in writing with the market administrator a request for such computation;

(2) A handler operating a pool plant may divert for his account under paragraph (a) (2) of this section, milk of any producer eligible for diversion, other than a member of a cooperative association which diverts milk under subparagraph (1) of this paragraph. The total quantity of milk so diverted, however, may not exceed 50 percent in the months of April through August, 30 percent in the months of December through March, and 20 percent in the months of September through November, of the milk received at or diverted from such pool plant during the month from producers who are not members of a cooperative association which diverts milk under subparagraph (1) of this paragraph;

* * * * *

Signed at Washington, D.C., on January 3, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-259; Filed, Jan. 8, 1968; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 73]

BIOLOGICAL PRODUCTS

Shipping Temperatures

Notice is hereby given that the Surgeon General proposes to amend Part 73 of the Public Health Service Regulations by prescribing the appropriate temperatures to be maintained during shipment for specific products which require refrigeration.

Inquiries may be addressed, and data, views and arguments may be presented by interested parties, in writing, in triplicate, to the Surgeon General, Public Health Service, 9000 Rockville Pike, Bethesda, Md. 20014. All relevant material received not later than 30 days after publication of this notice in the FEDERAL REGISTER will be considered.

Notice is also given that it is proposed to make any amendment that is adopted effective 30 days from the date of publication in the FEDERAL REGISTER.

1. Insert a new § 73.40 immediately after § 73.39 to read as follows:

§ 73.40 **Temperatures during shipment.**

The following products shall be maintained during shipment at the specified temperatures:

Product	*Temperature*
Whole Blood (Human).	1–10° C.
Packed Red Blood Cells (Human).	1–10° C.
Poliovirus Vaccine, Live, Oral, Type 1 Poliovirus Vaccine, Live, Oral, Type 2 Poliovirus Vaccine, Live, Oral, Type 3 Poliovirus Vaccine, Live, Oral, Trivalent	A temperature which will maintain ice continuously in a solid state.
Single Donor Plasma (Human), Frozen.	—18° C. or colder.
Smallpox Vaccine, Liquid.	A temperature which will maintain ice continuously in a solid state.
Yellow Fever Vaccine.	A temperature which will maintain ice continuously in a solid state.

§ 73.304 [Amended]

2. Section 73.304(d) is deleted.

3. Revise § 73.327 to read as follows:

§ 73.327 **General requirements.**

Manufacturing responsibilities, periodic check on sterile technique and reissue shall be carried out in all respects for Packed Red Blood Cells (Human) as prescribed in Section 73.304 for Whole Blood (Human).

(Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216. Interpret or apply sec. 351, 58 Stat. 702; 42 U.S.C. 262)

Dated: December 8, 1967.

[SEAL] WILLIAM H. STEWART,
Surgeon General.

Approved: January 2, 1968.

WILBUR J. COHEN,
Acting Secretary.

[F.R. Doc. 68-296; Filed, Jan. 8, 1968; 8:51 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 8630]

AIRWORTHINESS DIRECTIVES

Tost Type Universal 53 Glider Tow Couplings in Glasflugel H–301 Gliders

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Glasflugel H–301 "Libelle" gliders, serial numbers 2 through 55, equipped with Tost Type Universal 53 glider tow couplings. There have been instances of failure of the Tost Type Universal glider couplings to disengage properly when the tow cable imposes asymmetrical loads. Tost Modification No. 2/65 implemented by Amendment 39–449, 32 F.R. 10643 (AD 67–23–7), corrected the deficiency for most installations of the coupling. However, it is not appropriate for the Glasflugel H–30 "Libell" gliders with the above serial numbers. Glasflugel Modification No. 23 will correct the problem for these gliders. Therefore it is proposed to add an AD to require installation of tow cable deflectors in accordance with Glasflugel Modification No. 23.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before February 8, 1968, will be considered by the Administrator before taking action upon the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

GLASFLUGEL. Applies to Glasflugal H–301 "Libell" gliders, Serial Nos. 2 through 55, equipped with Tost Type Universal 53 glider tow couplings.

Compliance required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished.

To reduce the release load on the Tost Type Universal 53 glider tow coupling when the tow cable imposes asymmetrical loads, install tow cable deflectors on each side of the CG hook, in accordance with Glasflugal Modification No. 23, Drawing No. 301–15–16, or later LBA-approved issue or an equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region.

Issued in Washington, D.C., on December 28, 1967.

EDWARD C. HODSON,
Acting Director,
Flight Standards Service.

[F.R. Doc. 68–252; Filed, Jan. 8, 1968; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 21]

[Docket No. 15130]

MICROWAVE RADIO RELAY COMMUNICATIONS SYSTEMS

Reliability and Related Design Parameters and Resultant Impact Upon Spectrum Utilization; Order Extending Time for Filing Comments

1. The Commission is in receipt of a request from the Hawaiian Telephone Co. and from the American Telephone and Telegraph Co. asking that the time for filing reply comments in this proceeding be extended from January 3, 1968, to Februry 2, 1968.

2. Both companies refer to difficulties incurred because the normal period for preparing reply comments in this matter is, in practical fact, substantially reduced because that period extends over two holiday weekends. They request the extension of time for filing comments in order to permit them to review the complete set of documents filed in this proceeding and to prepare adequate replies thereto.

3. In view of the difficulties outlined by these petitioners and in view of the Commission's desire that time be afforded to ensure adequate study of the complex issues involved, it is felt that good cause has been shown for the extension of time as requested, and that a grant of the petitions would be in the public interest.

4. *Accordingly, it is ordered,* This 3d day of January 1968, that the requests of the Hawaiian Telephone Co. and the American Telephone and Telegraph Co. are granted, and that the time for filing reply comments in this proceeding is extended from January 3, 1968, to February 2, 1968.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.251(b) of the Commission's rules.

Adopted: January 3, 1968.

Released: January 3, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–309; Filed, Jan. 8, 1968; 8:51 a.m.]

[47 CFR Part 73]

[Docket No. 17562]

"PRESUNRISE" OPERATION BY CLASS II STATIONS

U.S. I–A Clear Channels; Order Extending Time for Filing Reply Comments

1. Reply comments in this proceeding, which concerns "presunrise" operation by Class II AM stations on U.S. I–A channels, are now due January 8, 1968. Storer Broadcasting Co. has requested that the time be extended to February 1, 1968. The reasons advanced include: The need for more time to analyze sizeable and detailed material filed in comments; the difficulty of duplicating material filed by parties; the intervening holiday season; and pressing commitments of Storer's engineering consultants and legal counsel. It appears that additional time for reply comments is warranted.

2. In view of the foregoing: *It is ordered,* That the time for filing reply comments in this proceeding is extended to and including February 1, 1968. Authority for this action is contained in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules and regulations.

Adopted: January 3, 1968.

Released: January 4, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–310; Filed, Jan. 8, 1968; 8:52 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

DEPUTY ASSISTANT ADMINISTRATOR AND ASSOCIATE ASSISTANT ADMINISTRATOR FOR ADMINISTRATION

Delegation of Authority

Pursuant to the authority delegated to me, I hereby redelegate to the Deputy Assistant Administrator and Associate Assistant Administrator for Administration, to the extent consistent with law, all the authorities now or hereafter delegated to the Assistant Administrator for Administration by Delegation of Authority from the Administrator or Deputy Administrator including those authorities conferred by Delegations of Authority Nos. 1, 3, 19, 27, 36, and 56, and any authorities, powers, or functions under any Agency Regulation, Policy Determination, Manual Orders, Directive, Notice or Issuance.

The Redelegation of Authority from the Assistant Administrator for Administration to the Deputy Assistant Administrator for Administration dated April 1, 1966, is hereby revoked. This Delegation of Authority shall be effective immediately.

H. REX LEE,
Assistant Administrator for Administration.

DECEMBER 22, 1967.

[F.R. Doc. 68-248; Filed, Jan. 8, 1968; 8:46 a.m.]

ASSISTANT ADMINISTRATOR FOR PRIVATE RESOURCES

Redelegation of Authority Relating to Investment Surveys and Investment Guaranties

Pursuant to the authority delegated to me by Delegation of Authority No. 33, as amended, from the Administrator of AID, dated February 3, 1964 (29 F.R. 2430), and Delegation of Authority No. 39, as amended, from the Administrator of AID, dated April 13, 1964 (29 F.R. 5355), I hereby redelegate authority as follows:

(1) To the Executive Director, Private Resources Development Service and to the Managing Director, Private Investment Center, each severally, to act in my place and stead in my absence with respect to exercising the authority delegated to me by the above-cited Delegations of Authority Nos. 33 and 39;

(2) To the Managing Director, Private Investment Center,

(a) To authorize, issue, and amend investment guaranties under section 221 (b) (1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2181(b) (1), covering investments (i) which take the form of royalties or (ii) which, as described in the Special Terms and Conditions of such guaranty contracts, do not exceed $5 million, and in connection therewith to make the related approvals and determinations provided in sections 221(a), 221(b), 221(c), and 222(a) of the said Act, 22 U.S.C. §§ 2181(a), 2181(b), 2181(c), and 2182(a), and

(b) To participate in financing surveys of investment opportunities under section 231 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2191, and in connection therewith to make the determinations and exercise the functions provided for in said section 231, 22 U.S.C. § 2191;

(3) To the Director, Insurance Division,

(a) To authorize, issue, and amend investment guaranties under section 221 (b) (1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2181(b) (1), covering investments (i) which take the form of royalties or (ii) which, as described in the Special Terms and Conditions of such guaranty contracts, do not exceed $500,000, and in connection therewith to make the related approvals and determinations provided in sections 221(a), 221(b), 221(c), and 222(a) of the said Act, 22 U.S.C. §§ 2181(a), 2181(b), 2181(c), and 2182(a), and

(b) To participate, in an amount not to exceed $5,000, in financing surveys of investment opportunities under section 231 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2191, and in connection therewith to make the determinations and exercise the functions provided for in said section 231, 22 U.S.C. § 2191, and

(c) To amend any investment guaranty issued under section 221(b) (1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2181(b) (1), provided such amendment does not increase the amount of investment covered by such guaranty, and

(d) To amend any investment survey issued under section 231 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2191, provided such amendment does not increase AID's participation above $5,000;

(4) To the Associate Director, Insurance Division, to extend the time, provided in an investment survey, in which a decision to invest may be made and further to consent to assignments of any contract of guaranty issued under section 221(b) (1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2181 (b) (1), under section 413(b) (4) (B) of the Mutual Security Act of 1954 or section 111(b) (3) of the Economic Cooperation Act of 1948, all as originally enacted and as amended, provided such assignments run to entities eligible to be issued investment guaranties under the legislation in force at the time of the assignment;

(5) To the Associate Director, Insurance Division and concurrently to the Chief, International Loan Branch, Accounting Division, to issue written notice of delinquency to any investor who has failed to pay any fee due under any contract of guaranty issued under section 221(b) (1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2181 (b) (1), under section 413(b) (4) (B) of the Mutual Security Act of 1954, or under section 111(b) (3) of the Economic Cooperation Act of 1948, all as originally enacted and as amended, and further to cancel any contract of guaranty when the investor covered thereunder has failed to pay the delinquent fee thereon within thirty (30) days following written notice of delinquency.

(6) To the Chief, Administration Branch, Finance Division, authority to amend investment guaranties and investment surveys to modify the reporting requirements thereunder.

This redelegation of authority is effective as of June 4, 1967 and supersedes from that date prior delegations of my authority. Investment guaranties, investment surveys, and amendments to either, signed between June 4, 1967, and the effective date of this redelegation of authority by William G. Carter, Leigh M. Miller, or Harry L. Freeman are hereby confirmed to have been signed with authority delegated to those signatories by me.

The authority herein delegated may not be redelegated.

Dated: December 12, 1967.

HERBERT SALZMAN,
Assistant Administrator for Private Resources.

[F.R. Doc. 68-249; Filed, Jan. 8, 1968; 8:46 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Montana 6712]

MONTANA

Notice of Proposed Withdrawal and Reservation of Lands

JANUARY 2, 1968.

The Forest Service, U.S. Department of Agriculture, has filed application, Montana 6712, for the withdrawal of land described below from all forms of appropriation under the public land laws, except the mineral laws.

The applicant desires to add the land to the Lewis and Clark National Forest for winter range for deer and watershed protection.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 316 North 26th Street, Billings, Mont. 59101.

The Department's regulations (43 CFR 2311.1–3(c)) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for the purpose other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

PRINCIPAL MERIDIAN, MONTANA

T. 11 N., R. 18 E.,
Sec. 18, NE¼NW¼.

The area described aggregates 40 acres.

EUGENE H. NEWELL,
Land Office Manager.

[F.R. Doc. 68–298; Filed, Jan. 8, 1968; 8:51 a.m.]

Office of the Secretary

WATCHES AND WATCH MOVEMENTS

Proposed Formula for Allocation of Quotas for Calendar Year 1968 Among Producers Located in the Virgin Islands and Guam

CROSS REFERENCE: For a document issued jointly by the Department of Commerce and the Department of the Interior relating to the allocation of quotas of watches and watch movements for the calendar year 1968 among producers located in the Virgin Islands and Guam, see F.R. Doc. 68–362, Commerce Department, *infra*.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

SALES OF CERTAIN COMMODITIES

January Sales List

Pursuant to the policy of Commodity Credit Corporation issued October 12, 1954 (19 F.R. 6669), and subject to the conditions stated therein as well as herein, the commodities listed below are available for sale and, where noted, for redemption of payment-in-kind certificates on the price basis set forth.

The U.S. Department of Agriculture announced the prices at which CCC commodity holdings are available for sale beginning at 3 p.m., e.s.t., on December 29, 1967, and, subject to amendment, continuing until superseded by the February Monthly Sales List.

The following commodities are available: Cotton (upland and extra long staple), wheat, corn, oats, barley, rye, rice, grain sorghum, peanuts, flax, tung oil, butter, cheese, and nonfat dry milk.

There is no change in the number of commodities listed for January.

Information on the availability of commodities stored in Commodity Credit Corporation bin sites may be obtained from ASCS State offices shown at the end of the sales list, and for commodities stored at other locations from ASCS commodity and grain offices also shown at the end of the list.

Corn, oats, barley, or grain sorghum, as determined by CCC, will be sold for unrestricted use for "Dealers' Certificates" issued under the emergency livestock feed program. Grain delivered against such certificates will be sold at the applicable current market price, determined by CCC.

In the following listing of commodities and sales prices or method of sales, "unrestricted use" applies to sales which permit either domestic or export use and "export" applies to sales which require export only. CCC reserves the right to determine the class, grade, quality and available quantity of commodities listed for sale.

The CCC Monthly Sales List, which varies from month to month as additional commodities become available or commodities formerly available are dropped, is designed to aid in moving CCC's inventories into domestic or export use through regular commercial channels.

If it becomes necessary during the month to amend this list in any material way—such as by the removal or addition of a commodity in which there is general interest or by a significant change in price or method of sale—an announcement of the change will be sent to all persons currently receiving the list by mail from Washington. To be put on this mailing list, address: Director, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Interest rates per annum under the CCC Export Credit Sales Program (Announcement GSM–3 or 4) for January 1968 are 6 percent for U.S. bank obligations and 7 percent for foreign bank obligations. Commodities now eligible for financing under the CCC Export Credit Sales Program include wheat, wheat flour, barley, bulgur, corn, cormeal, grain sorghum, upland and extra long staple cotton, tobacco, cottonseed oil, soybean oil, dairy products, tallow and beef breeding cattle. Commodities purchased from CCC may be financed for export as private stocks under Announcement GSM–4.

Information on commodities available under Title I, P.L. 480, private trade agreements, and current information on interest rates and other phases of the program may be obtained from the Office of the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250.

The following commodities are currently available for new and existing barter contracts: Oats, cotton (upland and extra long staple), and tobacco. Wheat and grain sorghum are also available under conditions noted in the individual commodity listings. (In addition, free market stocks of corn, grain sorghum, wheat and wheat flour, under Announcement PS–1; tobacco under Announcement PS–3; and cottonseed oil and soybean oil under Announcement PS–2 are eligible for programing in connection with barter contracts covering procurements for Federal agencies that will reimburse CCC except that Hard Red Winter, Hard Red Spring, and durum wheats, and flour produced from those wheats, may not be exported through west coast ports. Further information on private-stock commodities may be obtained from the Office of Barter and Stockpiling, Foreign Agricultural Service, USDA, Washington, D.C. 20250.)

The CCC will entertain offers from responsible buyers for the purchase of any commodity on the current list. Offers accepted by CCC will be subject to the terms and conditions prescribed by the Corporation. These terms include payment by cash or irrevocable letter of credit before delivery of the commodity, and the conditions require removal of the commodity from CCC stocks within a reasonable period of time. Where sales are for export, proof of exportation is also required, and the buyer is responsible for obtaining any required U.S. Government export permit or license. Purchases from CCC shall not constitute any assurance that any such permit or license will be granted by the issuing authority.

Applicable announcements containing all terms and conditions of sale will be furnished upon request. For easy reference a number of these announcements are identified by code number in following list. Interested persons are invited to communicate with the Agricultural Stabilization and Conservation Service, USDA, Washington, D.C. 20250, with respect to all commodities or—for specified commodities—with the designated ASCS commodity office.

Commodity Credit Corporation reserves the right to amend from time to time, any of its announcements. Such amendments shall be applicable to and be made a part of the sale contracts thereafter entered into.

CCC reserves the right to reject any or all offers placed with it for the purchase of commodities pursuant to such announcements.

CCC reserves the right to refuse to consider an offer, if CCC does not have adequate information of financial responsibility of the offerer to meet contract obligations of the type contemplated in this announcement. If a prospective offerer is in doubt as to whether CCC has adequate information with respect to his financial responsibility, he should either submit a financial statement to the office named in the invitation prior to making an offer, or communicate with such office to determine whether such a statement is desired in his case. When satisfactory financial responsibility has not been established, CCC reserves the right to consider an offer only upon submission by offerer of a certified or cashier's check, a bid bond, or other security, acceptable to CCC, assuring that if the offer is accepted, the offerer will comply with any provisions of the contract with respect to payment for the commodity and the furnishing of performance bond or other security acceptable to CCC.

Disposals and other handling of inventory items often result in small quantities at given locations or in qualities not up to specifications. These lots are offered by the appropriate ASCS office promptly upon appearance and therefore, generally, they do not appear in the Monthly Sales List.

On sales for which the buyer is required to submit proof to CCC of exportation, the buyer shall be regularly engaged in the business of buying or selling commodities and for this purpose shall maintain a bona fide business office in the United States, its territories or possessions and have a person, principal or resident agent upon whom service of judicial process may be had.

Prospective buyers for export should note that generally, sales to U.S. Government agencies, with only minor exceptions will constitute domestic unrestricted use of the commodity.

Commodity Credit Corporation reserves the right, before making any sales, to define or limit export areas.

The Department of Commerce, Bureau of International Commerce, pursuant to regulations under the Export Control Act of 1949, prohibits the exportation or reexportation by anyone of any commodities under this program to Cuba, the Soviet Bloc or Communist-controlled areas of the Far East including Communist China, North Korea, and the Communist controlled area of Viet Nam except under validated license issued by the U.S. Department of Commerce, Bureau of International Commerce.

For all exportations, one of the destination control statements specified in Commerce Department Regulations (Comprehensive Export Schedule § 379.10(c)) is required to be placed on all copies of the shipper's export declaration, all copies of the bill of lading, and all copies of the commercial invoices. For additional information as to which destination control statement to use, the exporter should communicate with the Bureau of International Commerce or one of the field offices of the Department of Commerce.

Exporters should consult the applicable Commerce Department regulations for more detailed information if desired and for any changes that may be made therein.

SALES PRICE OR METHOD OF SALE

WHEAT, BULK

Unrestricted use.

A. *Storable.* All classes of wheat in CCC inventory are available for sale at market price but not below 115 percent of the 1967 price-support loan rate for the class, grade, and protein of the wheat plus the markup shown in C below applicable to the type of carrier involved.

B. *Nonstorable.* At not less than market price, as determined by CCC.

C. *Markup and examples (dollars per bushel in-store).*[1]

Markup in-store[1] received by—		Examples—Agricultural Act of 1949; Stat. minimum
Truck	Rail or barge	
$0.13	$0.10½	Minneapolis—No. 1 DNS ($1.55) 115 percent +$0.10½; $1.89½. Portland—No. 1 SW ($1.44) 115 percent +$0.10½; $1.76½. Kansas City—No. 1 HRW ($1.43) 115 percent +$0.10½; $1.75½. Chicago—No. 1 RW ($1.47) 115 percent +$0.10½; $1.80½.

Export.

A. CCC will sell limited quantities of Hard Red Winter and Hard Red Spring wheat at west coast ports at domestic market price levels for export under Announcement GR-345 (Revision IV, Oct. 30, 1967, as amended) as follows:

(1) Notice of foreign sale must be furnished CCC within 5 calendar days after purchase.

(2) Sales will be made only to fill dollar market sales abroad and exporter must show export from the west coast to a destination west of the 170th meridian, west longitude, and east of the 60th meridian, east longitude, and to countries on the west coast of Central and South America.

B. CCC will sell wheat for export under Announcement GR-261 (Revision III, Jan. 9, 1961, as amended and supplemented) subject to the following:

(1) All classes will be sold subject to offers which include the price at which the buyer proposes to purchase the wheat.

(2) All classes will be sold to fill dollar market sales abroad and exporter must show export from the west coast to a destination within the geographical limitation shown in A(2) above.

(3) All classes will be sold for application to barter contracts entered into pursuant to invitations for barter offers dated prior to August 26, 1966. However, CCC-owned wheat will not be sold for barter at west coast ports nor will evidence of export at west coast ports be acceptable under a sale for barter.

C. Announcement GR-262 (Revision II, Jan. 9, 1961, as amended) for export as flour as follows: All classes will be sold for application to barter contracts entered into pursuant to invitations for barter offers dated prior to August 26, 1966. However, sales for barter will not be made at west coast ports nor will evidence of export from west coast ports be acceptable under a sale for barter pursuant to this announcement.

D. CCC will not sell wheat under Announcement GR-346 until further notice.

Available. Evanston, Kansas City, Minneapolis, and Portland ASCS offices.

CORN, BULK

Unrestricted use.

A. *Redemption of domestic payment-in-kind certificates.* Such CCC dispositions of corn as CCC may designate will be in redemption of certificates or rights represented by pooled certificates under a feed grain program. The price at which corn shall be valued for such dispositions shall be the market price as determined by CCC, but not less than 115 percent of the applicable 1967 price-support loan rate[2] for the class, grade, and quality of the corn plus the markup shown in C of this unrestricted use section.

B. *General sales.*—1. *Storable.* Such CCC dispositions of storable corn as CCC may designate as general sales will be made during the month at market price, as determined by CCC, but not less than the Agricultural Act of 1949 formula minimum price for such sales which is 105 percent of the applicable 1967 price support rate[2] (published loan rate plus 19 cents per bushel) for the class, grade, and quality of the corn, plus the markup shown in C of this unrestricted use section.

2. *Nonstorable.* At not less than market price as determined by CCC.

C. *Markups and examples (dollars per bushel in-store[1] basis No. 2 Yellow Corn 14 percent M.T. 2 percent F.M.).*

Markup in-store received by—	Examples
Truck	
$0.08½	Feed grain program domestic PIK certificate minimums: McLean County, Ill. ($1.08+$0.02½) 115 percent +$0.08½; $1.36½. Agricultural Act of 1949; stat. minimums: McLean County, Ill. ($1.08+$0.02½ +$0.19): 105 percent +$0.08½; $1.44½.

Available. Evanston, Kansas City, Minneapolis, and Portland ASCS grain offices.

Export. Corn from CCC inventory is not available for export sale.

GRAIN SORGHUM, BULK

Unrestricted use.

A. *Redemption of domestic payment-in-kind certificates.* Such CCC dispositions of grain sorghum as CCC may designate will be in redemption of certificates or rights represented by pooled certificates under a feed grain program. The minimum price at which grain sorghum shall be valued for such dispositions shall be market price, as determined by CCC, but not less than 115 percent of the applicable 1967 price-support loan rate[2] for the class, grade, and quality of the grain sorghum, plus the markup shown in C of this unrestricted use section applicable to the type of carrier involved.

B. *General sales.* 1. *Storable.* Such CCC dispositions of storable grain sorghum as CCC may designate as general sales will be made during the month at market price, as determined by CCC, but not less than the Agricultural Act of 1949 formula minimum price for such sales which is 105 percent of the applicable 1967 price-support rate[2] (published loan rate plus 34 cents per hundredweight) for the class, grade, and quality of the grain sorghum, plus the markup shown in C of this unrestricted use

section applicable to the type of carrier involved.

2. *Nonstorable.* At not less than market price as determined by CCC.

C. *Markups and examples (dollars per hundredweight in-store[1] No. 2 or better).*

Markup in-store received by—		Examples
Truck	Rail or barge	
$0.14¼	$0.10¼	Feed grain program domestic PIK certificate minimums: Hale County, Tex. ($1.59) 115 percent +$0.14¾; $1.97¾. Kansas City, Mo. (ex-rail) ($1.85) 115 percent +$0.10¼; $2.23¾. Agricultural Act of 1949; stat. minimums: Hale County, Tex. ($1.59+$0.34); 105 percent +$0.14¾; $2.17¾. Kansas City, Mo. (ex-rail) ($1.85+$0.34); 105 percent +$0.10¼; $2.40¼.

Export. Sales are made at the higher of the domestic market price, as determined by CCC, or 115 percent of the applicable 1967 price-support loan rate plus carrying charges in section C. The statutory minimum price referred to in the price adjustment provisions of the following export sales announcements is 105 percent of the applicable price-support rate plus the markup referred to in C of the unrestricted use section for grain sorghum. Sales will be made pursuant to the following announcements:

A. Announcement GR–368 (Revision 2, Mar. 1, 1965, as amended), for export commodity certificate redemption.

B. Announcement GR–212 (Revision 2, Jan. 9, 1961) for application to barter contracts entered into pursuant to invitations for barter offers dated prior to August 26, 1966, and for cash or other designated sales.

Available. Evanston, Kansas City, Minneapolis, and Portland ASCS grain offices.

BARLEY, BULK

Unrestricted use.

A. *Storable.* Market price, as determined by CCC, but not less than 115 percent of the applicable 1967 price-support rate[2] for the class, grade, and quality of the barley plus the applicable markup.

B. *Markups and examples (dollars per bushel in-store[1] No. 2 or better).*

Markup in-store received by—		Examples
Truck	Rail or barge	
$0.13	$0.10½	Cass County, N. Dak. ($0.87); 115 percent +$0.13; $1.14. Minneapolis, Minn. (ex-rail) ($1.10); 115 percent +$0.10½; $1.37½.

C. *Nonstorable.* At not less than market price as determined by CCC.

Export. Sales are made at the higher of the domestic market price, as determined by CCC, or 115 percent of the applicable 1967 price-support loan rate plus carrying charges in section B. The statutory minimum price referred to in the price adjustment provisions of the following export sales announcement is 105 percent of the applicable price-support rate plus the markup referred to in B of the unrestricted use section for barley. Sales will be made pursuant to the following announcements:

A. Announcement GR–368 (Revision 2, Mar. 1, 1965, as amended), for export commodity certificate redemption.

B. Announcement GR–212 (Revision 2, Jan. 9, 1961) for cash or other designated sales.

Available. Kansas City, Evanston, Portland, and Minneapolis grain offices.

OATS, BULK

Unrestricted use.

A. Market price, as determined by CCC, but not less than 115 percent of the applicable 1967 price-support rate[2] for the class, grade, and quality of the oats plus the markup shown in B below.

B. *Markups and examples (dollars per bushel in-store[1] basis No. 2 XHWO).*

Markup in-store received by—	Examples—Agricultural Act of 1949; Stat. minimum
Truck	
$0.13	Redwood County, Minn. ($0.60+$0.03 quality differential); 115 percent +$0.13; $0.86.

C. *Nonstorable.* At not less than the market price as determined by CCC.

Export. Sales are made at the higher of the domestic market price, as determined by CCC, or 115 percent of the applicable 1967 price-support loan rate plus carrying charges in section B. The statutory minimum price referred to in the price adjustment provisions of the following export sales announcements is 105 percent of the applicable price-support rate plus the markup referred to in B of the unrestricted use section for oats. Sales will be made pursuant to the following announcements.

A. Announcement GR–368 (Revision 2, Mar. 1, 1965, as amended), for export commodity certificate redemption.

B. Announcement GR–212 (Revision 2, Jan. 9, 1961), for application to barter contracts and for cash or other designated sales.

Available. Kansas City, Evanston, Minneapolis, and Portland ASCS grain offices.

RYE, BULK

Unrestricted use.

A. *Storable.* Market price, as determined by CCC, but not less than the Agricultural Act of 1949 formula price which is 115 percent[2] of the applicable 1967 price-support rate for the class, grade, and quality of the grain plus the markup shown in B below applicable to the type of carrier involved.

B. *Markups and examples (dollars per bushel in-store[1] No. 2 or better).*

Markup in-store received by—		Examples—Agricultural Act of 1949 Stat. minimum
Truck	Rail or barge	
$0.013	$0.10½	Rolette County, N. Dak. ($0.90); 115 percent +$0.13; $1.17. Minneapolis, Minn. (ex-rail) ($1.23); 115 percent +$0.10½; $1.52½.

C. *Nonstorable.* At not less than market price as determined by CCC.

Export. Sales are made at the higher of the domestic market price, as determined by CCC, or 115 percent of the applicable 1967 price-support loan rate plus carrying charges in section B. The statutory minimum price referred to in the price adjustment provisions of the following export sales announcement is 105% of the applicable price-support rate plus the markup referred to in B of the unrestricted use section for rye. Sales will be made pursuant to the following announcements:

A. Announcement GR–368 (Revision 2, Mar. 1, 1965, as amended), for export commodity certificate redemption.

B. Announcement GR–212 (Revision 2, Jan. 9, 1961) for cash or other designated sales.

Available. Evanston, Kansas City, Portland, and Minneapolis ASCS grain offices.

RICE, ROUGH

Unrestricted use. Market price but not less than 1967 loan rate plus 5 percent plus 28 cents per hundredweight, basis in store.

Export. As milled or brown under announcement GR–369, Revision III, as amended, Rice Export Program.

Available. Prices, quantities, and varieties of rough rice available from Kansas City ASCS Commodity Office.

COTTON, UPLAND

Unrestricted use.

A. Competitive offers under the terms and conditions of Announcement NO–C–32 (Sale of Upland Cotton for Unrestricted Use). Under this announcement, upland cotton acquired under price-support programs will be sold at the highest price offered but in no event at less than the higher of (a) 110 percent of the current loan rate for such cotton, or (b) the market price for such cotton as determined by CCC.

B. Competitive offers under the terms and conditions of Announcement NO–C–31 (Disposition of Upland Cotton—In Redemption of Payment-In-Kind Certificates or Rights in Certificate Pools, In Redemption of Export Commodity Certificates, Against the "Shortfall," and Under Barter Transactions), as amended. Cotton may be acquired at its current market price, as determined by CCC, but not less than a minimum price determined by CCC which will in no event be less than 120 points (1.2 cents per pound) above the loan rate for such cotton.

Export.

CCC disposals for barter. Competitive offers under the terms and conditions of Announcements ON–EX–28 (Acquisition of Upland Cotton for Export Under the Barter Program) and NO–C–31 (described above), as amended.

COTTON, EXTRA LONG STAPLE

Unrestricted use.

Competitive offers under the terms and conditions of Announcements NO–C–6 (Revised July 22, 1960), as amended, and NO–C–10, as amended. Under these announcements extra long staple cotton (domestically grown) will be sold at the highest price offered but in no event at less than the higher of (a) 115 percent of the current support price for such cotton plus reasonable carrying charges, or (b) the domestic market price as determined by CCC.

Export.

A. *CCC sales for export.* Competitive offers under the terms and conditions of Announcements CN–EX–22 (Extra Long Staple Cotton Export Program) and NO–C–27 (Sale of Extra Long Staple Cotton), as amended.

B. *Barter.* Competitive offers under the terms and conditions of Announcement CN–EX–27 (Acquisition of Extra Long Staple Cotton for Export Under the Barter Program), and NO–C–27 (Sale of Extra Long Staple Cotton), as amended.

COTTON, UPLAND OR EXTRA LONG STAPLE

Unrestricted use.

A. Competitive offers under the terms and conditions of Announcement NO–C–18 (Sale of Cotton—To Establish Claims). Any such cotton will be offered for sale periodically on

the basis of samples representing the cotton for the purpose of establishing claims against producers and others according to schedules issued from time to time by CCC.

B. Competitive offers under the terms and conditions of Announcement NO–C–20 (Sale of Special Condition Cotton). Any such cotton (Below Grade, Sample Loose, Damaged Pickings, etc.) owned by CCC will be offered for sale periodically on the basis of samples representing the cotton according to schedules issued from time to time by CCC.

Availability information.

Sale of cotton will be made by the New Orleans ASCS Commodity Office. Sales announcements, related forms and catalogs for upland cotton and extra long staple cotton showing quantities, qualities and location may be obtained for a nominal fee from that office.

PEANUTS, SHELLED OR FARMERS STOCK

When stocks are available in their area of responsibility, the quantity, type, and grade offered and whether for restricted or unrestricted use are announced in weekly lot lists or invitations to bid issued by the following:

GFA Peanut Association, Camilla, Ga.

Peanut Growers Cooperative Marketing Association, Franklin, Va.

Southwestern Peanut Growers' Association, Gorman, Tex.

A. *Restricted use sales.* Announcement PR–1 as amended, and the lot list contain terms and conditions of sales restricted to domestic crushing or export.

1. Shelled peanuts of less than U.S. No. 1 grade may be purchased for foreign or domestic crushing.

2. Farmers stock peanuts may be purchased for domestic crushing or for export of U.S. No. 1 or better shelled peanuts. All peanuts of less than U.S. No. 1 quality must be crushed domestically.

All sales are made on the basis of competitive bids each Wednesday, by the Producer Associations Division, Agricultural Stabilization and Conservation Service, Washington, D.C. 20250, to which all bids are submitted.

TUNG OIL

Unrestricted use.

Sales are made periodically on a competitive bid basis. Bids are submitted to the Producer Associations Division, Agricultural Stabilization and Conservation Service, Washington, D.C. 20250.

The quantity offered and the date bids are to be received are announced to the trade in notices of Invitation to Bid, issued by the National Tung Oil Marketing Cooperative, Inc., Poplarville, Miss. 39470.

Terms and conditions of sale are as set forth in Announcement NTOM–PR–4 of April 6, 1967, as amended, and the applicable Invitation to Bid.

Bids will include, and be evaluated on the basis of, price offered per pound f.o.b. storage location. For certain destinations, CCC will as provided in the Announcement, as amended, refund to the buyer a "freight equalization" allowance.

Copies of the Announcement or the Invitation may be obtained from the Cooperative or Producer Associations Division, ASCS, telephone Washington, D.C., area code 202, DU 8–3901.

FLAXSEED, BULK

Unrestricted use.

A. *Storable.* Domestic market price but not less than the applicable 1967 support price for the class, grade, and quality of flaxseed plus 14½ cents per bushel, and plus the respective markup shown in B below applicable to the type of carrier involved.

B. *Markups and examples (dollars per bushel in-store*[1]*).*

Markup per bushel received by—		Examples of minimum prices (ex-rail or barge)		
Truck	Rail or barge	Terminal	Class and grade	Price
Cents $0.15	*Cents* $0.10¾	Minneapolis--	No. 1--------	$3.40¼

C. *Nonstorable.* At not less than domestic market price as determined by CCC.

Available. Through the Minneapolis ASCS Branch Office.

DAIRY PRODUCTS

Sales are in carlots only in-store at storage location of products.

Submission of offers. Submit offers to the Minneapolis ASCS Commodity Office.

NONFAT DRY MILK

Unrestricted use.

Announced prices, under MP–14: Spray process, U.S. Extra Grade, 21.60 cents per pound packed in 100-pound bags and 21.85 cents per pound packed in 50-pound bags.

BUTTER

Unrestricted use.

Announced prices, under MP–14: 74 cents per pound—New York, Pennsylvania, New Jersey, New England, and other States bordering the Atlantic Ocean and Gulf of Mexico. 73.25 cents per pound—Washington, Oregon, and California. All other States 73 cents per pound.

CHEDDAR CHEESE (STANDARD MOISTURE BASIS)

Unrestricted use.

Announced prices, under MP–14: 49.125 cents per pound—New York, Pennsylvania, New England, New Jersey, and other States bordering the Atlantic Ocean and Pacific Ocean and the Gulf of Mexico. All other States 48.125 cents per pound.

FOOTNOTES

[1] The formula price delivery basis for binsite sales will be f.o.b.

[2] Round product up to the nearest cent.

USDA AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE OFFICES

GRAIN OFFICES

Kansas City ASCS Commodity Office, 8930 Ward Parkway (Post Office Box 205), Kansas City, Mo. 64141. Telephone: Emerson 1–0860.

Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Hawaii, Kansas, Louisiana, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming (domestic and export), California (domestic only).

Branch Office—Evanston ASCS Branch Office, 2201 Howard Street, Evanston, Ill. 60202. Telephone: Long Distance—Area code 312, 353–6581. Local—353–6581 (Chicago, Ill.).

Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, and West Virginia.

Branch Office—Minneapolis ASCS Branch Office, 310 Grain Exchange Building, Minneapolis, Minn. 55415. Telephone: 334–2051.

Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

Branch Office—Portland ASCS Branch Office, 1218 Southwest Washington Street, Portland, Oreg. 97205. Telephone: 226–3361.

Idaho, Oregon, Utah, and Washington (domestic and export sales), California (export sales only).

PROCESSED COMMODITIES OFFICE (ALL STATES)

Minneapolis ASCS Commodity Office, 6400 France Avenue South, Minneapolis, Minn. 55435. Telephone: Area Code 612, 334–3200.

COTTON OFFICE (ALL STATES)

New Orleans ASCS Commodity Office, Wirth Building, 120 Marais Street, New Orleans, La. 70112. Telephone: 527–7766.

GENERAL SALES MANAGER OFFICES

Representative of General Sales Manager, New York Area: Joseph Reidinger, 80 Lafayette Street, New York, N.Y. 10013. Telephone: 264–8439, 8440, 8441.

Representative of General Sales Manager, West Coast Area: Callan B. Duffy, Appraisers' Building, Room 802, 630 Sansome Street, San Francisco, Calif. 94111. Telephone: 556–6185.

ASCS STATE OFFICES

Illinois, Room 232, U.S. Post Office and Courthouse, Springfield, Ill. 62701. Telephone: Area Code 217, 525–4180.

Indiana, Room 110, 311 West Washington Street, Indianapolis, Ind. 46204. Telephone: Area Code 317, 633–8521.

Iowa, Room 311, Iowa Building, 505 Sixth Avenue, Des Moines, Iowa 50307. Telephone: Area Code 515, 284–4213.

Kansas, 2601 Anderson Avenue, Manhattan, Kans. 66502. Telephone: Area Code 913, JE 9–3531.

Michigan, 1405 South Harrison Road, East Lansing, Mich., 48823. Telephone: Area Code, 517, 372–1910.

Missouri, I.O.O.F. Building, 10th and Walnut Streets, Columbia, Mo. 65201. Telephone: Area Code 314, 442–3111.

Minnesota, Griggs Midway Building, 1821 University Avenue, St. Paul, Minn. 55104. Telephone: Area Code 612, 228–7651.

Montana, Post Office Box 670, U.S.P.O. and Federal Office Building, Bozeman, Mont. 59715. Telephone: Area Code 587, 4511, Ext. 3271.

Nebraska, Post Office Box 793, 5801 O Street, Lincoln, Nebr. 68501. Telephone: Area Code 402, 475–3361.

North Dakota, Post Office Box 2017, 15 South 21st Street, Fargo, N. Dak. 58103. Telephone: Area Code, 701, 237–5205.

Ohio, Room 202, Old Federal Building, Columbus, Ohio 43215. Telephone: Area Code 614, 469–5644.

South Dakota, Post Office Box 843, 239 Wisconsin Street SW., Huron, S. Dak. 57350. Telephone: Area Code 605, 352–8651, Ext. 321 or 310.

Wisconsin, Post Office Box 4248, 4601 Hammersley Road, Madison, Wis. 53711. Telephone: Area Code 608, 256–4441, Ext. 7535.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 407, 63 Stat. 1066; sec. 105, 63 Stat. 1051, as amended by 76 Stat. 612; secs. 303, 306, 307, 76 Stat. 614–617; 7 U.S.C. 1441 (note))

Signed at Washington, D.C., on December 29, 1967.

E. A. JAENKE,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 68–207; Filed, Jan. 8, 1968; 8:45 a.m.]

GRAINS AND SIMILARLY HANDLED COMMODITIES

Notice of Extension of Warehouse Storage Loans

Pursuant to the provisions of § 1421.55 of the General Regulations Governing Price Support for the 1964 and Subsequent Crops of Grains and Similarly Handled Commodities, as amended, CCC hereby gives notice that, unless the producer gives the ASC county office through which he obtained his loan written notice prior to the loan maturity date that he does not want such maturity date extended, all price support warehouse storage loans on the 1967 crops of barley, corn, grain sorghum, oats, soybeans, and wheat are extended for a period of 1 year from the original maturity date of the loans as follows, subject to maturity upon such earlier date as demand for payment is made:

Commodity	From original loan maturity date	To extended loan maturity date
Barley stored in Alaska, Idaho, Minnesota, Montana, North Dakota, Oregon, South Dakota, Washington, Wisconsin, and Wyoming	May 31, 1968	May 31, 1969
Barley stored in all other States	Apr. 30, 1968	Apr. 30, 1969
Corn stored in all States	July 31, 1968	July 31, 1969
Grain Sorghum stored in Oklahoma and Texas	June 30, 1968	June 30, 1969
Grain Sorghum stored in all other States	July 31, 1968	July 31, 1969
Oats stored in Alaska, Idaho, Maine, Michigan, Minnesota, Montana, North Dakota, Oregon, South Dakota, Washington, Wisconsin, and Wyoming	May 31, 1968	May 31, 1969
Oats stored in all other States	Apr. 30, 1968	Apr. 30, 1969
Soybeans stored in all States	July 31, 1968	July 31, 1969
Wheat stored in Idaho, Minnesota, Montana, North Dakota, Oregon, Washington, and Wyoming	May 31, 1968	May 31, 1969
Wheat stored in all other States	Apr. 30, 1968	Apr. 30, 1969

(Secs. 4, 5, 62 Stat. 1070, as amended; secs. 101, 401, 403, 405, 63 Stat. 1051, as amended; 15 U.S.C. 714 b and c; 7 U.S.C. 1441, 1421, 1423, 1425)

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on January 2, 1968.

H. D. GODFREY,
Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 68-257; Filed, Jan. 8, 1968; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

HOLY CROSS HOSPITAL

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68-00172-33-46040. Applicant: Holy Cross Hospital, 2701 West 68th Street, Chicago, Ill. 60629. Article: Electron Microscope EM 9A with accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: Research projects of pathology staff, teaching medical students, interns, and residents in oncology. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The applicant requires a medium resolution electron microscope which is relatively simple to operate, for teaching medical students, interns and residents in the science of oncology which deals with physical, chemical, and biological properties of neoplasms. The foreign article provides simplicity of operation which permits students to start the mechanism, check the alignment and operate the article after a short training period. In addition, the foreign article provides a digital readout of the continuous fine focusing system, which permits the instructor to check the correctness of the focusing adjustment of the student, as well as to exactly repeat the focusing adjustment when several students are performing an identical experiment. The only known domestic instrument, the Model EMU-4 electron microscope manufactured by the Radio Corporation of America (RCA), is a high resolution instrument designed for research. It is a complex instrument which requires for its operation highly qualified personnel with appropriate experience in electron microscopy and, therefore, not suitable for teaching a large group of students.

For the foregoing reasons, we find that the RCA Model EMU-4 electron microscope is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68-225; Filed, Jan. 8, 1968; 8:45 a.m.]

STATE UNIVERSITY OF NEW YORK, DOWNSTATE MEDICAL CENTER

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68-00150-33-46040. Applicant: State University of New York, Downstate Medical Center, Department of Pathology, 450 Clarkson Avenue, Brooklyn, New York 11203. Article: Electron Microscope, EM 300 with rotating tilting stage, 70-mm. film holder, desiccator, and decontamination device. Manufacturer: N. V. Philips Gloeilampenfabrieken, The Netherlands. Intended use of article: The article will be used to examine fine structure of induced pathobiological tissue changes, correlative light and electron microscopy will be carried out to examine the same cells in thin and thick plastic sections. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article provides a guaranteed resolution of 5 Angstroms. The only known comparable domestic instrument, the Model EMU-4 electron microscope manufactured by the Radio Corporation of America (RCA), provides a guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolution.) We find that, for the purposes for which the foreign article is intended to be used, the additional resolving capabilities provided by the foreign article are pertinent. (2) The foreign article provides accelerating voltages of 20, 40, 60, 80, and 100 kilovolts, whereas the RCA Model EMU-4 provides only two accelerating voltages, 50 and 100 kilovolts. It has been experimentally established that the lower accelerating voltage of the foreign article affords optimum contrast for thin unstained biological specimens and that the voltages intermediate between 50 and 100 kilovolts afford optimum contrast for negatively stained specimens. The additional accelerating voltages provided by the foreign article are pertinent to the purposes for which the article is intended to be used.

For the foregoing reasons, we find that the RCA Model EMU-4 electron microscope is not of equivalent scientific value to the foreign article, for the purposes

for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68-226; Filed, Jan. 8, 1968; 8:45 a.m.]

UNIVERSITY OF WYOMING

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68-00158-33-46040. Applicant: University of Wyoming, Box 3354, University Station, Laramie, Wyo. 82070. Article: Norelco EM 300 Electron Microscope with specimen chamber cooling device. Manufacturer: Philips Electronic Instruments, Holland. Intended use of article: Critical studies of viral growth and reproduction in insects. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article provides a guaranteed resolution of 5 Angstroms. The only known comparable domestic instrument, the Model EMU-4 electron microscope manufactured by the Radio Corporation of America (RCA), provides a guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolution.) We find that, for the purposes for which the foreign article is intended to be used, the additional resolving capabilities provided by the foreign article are pertinent. (2) The foreign article provides accelerating voltages of 20, 40, 60, 80, and 100 kilovolts, whereas the RCA Model EMU-4 provides only two accelerating voltages, 50 and 100 kilovolts. It has been experimentally established that the lower accelerating voltage of the foreign article affords optimum contrast for thin unstained biological specimens and that the voltages intermediate between 50 and 100 kilovolts afford optimum contrast for negatively stained specimens. The additional accelerating voltages provided by the foreign article are pertinent to the purposes for which the article is intended to be used.

For the foregoing reasons, we find that the RCA Model EMU-4 electron microscope is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68-227; Filed, Jan. 8, 1968; 8:45 a.m.]

NEW YORK UNIVERSITY MEDICAL CENTER

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68-00120-33-46040. Applicant: New York University Medical Center, 550 First Avenue, New York, N.Y. 10016. Article: Electron Microscope EM 300 with 70-mm. film camera and decontamination device. Manufacturer: N. V. Philips Gloeilampenfabrieken, The Netherlands. Intended use of article: High resolution studies of cell membrane structure and contact relationships in adult and embryonic nervous tissues and tissue fractions; comparative studies of the ultrastructure of smooth muscle and related types of muscle including examination of isolated myofilaments; histochemical studies of nerve and muscle tissues including examination of tissue sections in which the contrast of background detail has not been enhanced by heavy metals; autoradiographic studies of protein and nucleic acid synthesis in nerve and muscle cells. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article provides a guaranteed resolution of 5 Angstroms. The only known comparable domestic instrument, the Model EMU-4 electron microscope manufactured by the Radio Corporation of America (RCA), provides a guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolution.) We find that, for the purposes for which the foreign article is intended to be used, the additional resolving capabilities provided by the foreign article are pertinent. (2) The foreign article provides accelerating voltages of 20, 40, 60, 80, and 100 kilovolts, whereas the RCA Model EMU-4 provides only two accelerating voltages, 50 and 100 kilovolts. It has been experimentally established that the lower accelerating voltage of the foreign article affords optimum contrast for thin unstained biological specimens and that the voltages intermediate between 50 and 100 kilovolts afford optimum contrast for negatively stained specimens. The additional accelerating voltages provided by the foreign article are pertinent to the purposes for which the article is intended to be used.

For the foregoing reasons, we find that the RCA Model EMU-4 electron microscope is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68-228; Filed, Jan. 8, 1968; 8:45 a.m.]

CHILDREN'S CANCER RESEARCH FOUNDATION

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68-00112-33-46040. Applicant: Children's Cancer Research Foundation, 35 Binney Street, Boston, Mass. 02115. Article: Electron Microscope EM 300, 35-mm. film holder for electron microscope, transport mechanism for film holder, desiccator for plates and film. Manufacturer: Philips Electronic Instruments, Inc., The Netherlands. Intended use of article: Applicant states:

(a) The search for virus particles in blood and tissue specimens from patients with acute leukemia, lymphoma and other forms of malignant disease. This survey involves the making of large numbers of photomicrographs.

(b) The search for virus particles, and significant ultrastructural changes in human leukemic cells grown in cultures.

(c) The search for virus particles in the tissues and blood of hamsters bearing human leukemia and lymphosarcoma.

(d) The study of nuclear and chromosomal structure in hamsters bearing human lymphosarcoma and leukemia.

(e) The localization of radioactive molecules in tissues of the developing central and peripheral nervous systems in mice and other small mammals.

(f) The localization of radioactive molecules in nuclei of tissues from hamsters bearing human tumors.

(g) The documentation of changes in the structure of synapses of patients with mental retardation and other diseases of the nervous system.

(h) The study of biopsies of tissues from patients with diseases of the brain, spinal cord and nerves.

(i) The recording of changes in the lungs of children with obscure infectious diseases such as fungal or parasitic and in small mammals with similar types of diseases.

(j) The study of fibrous proteins (fibrinogen, tropomyosin).

(k) The study of a variety of problems brought to us by various members of the staff of the Children's Cancer Research Foundation and of the Pathology Department, Children's Hospital Medical Center.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article provides a guaranteed resolution of 5 Angstroms. The only known comparable domestic instrument, the Model EMU–4 electron microscope manufactured by the Radio Corporation of America (RCA), provides a guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolution.) We find that, for the purposes for which the foreign article is intended to be used, the additional resolving capabilities provided by the foreign article are pertinent. (2) The foreign article provides accelerating voltages of 20, 40, 60, 80, and 100 kilovolts, whereas the RCA Model EMU–4 provides only two accelerating voltages, 50 and 100 kilovolts. It has been experimentally established that the lower accelerating voltage of the foreign article affords optimum contrast for thin unstained biological specimens and that the voltages intermediate between 50 and 100 kilovolts afford optimum contrast for negatively stained specimens. The additional accelerating voltages provided by the foreign article are pertinent to the purposes for which the article is intended to be used.

For the foregoing reasons, we find that the RCA Model EMU–4 electron microscope is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68–229; Filed, Jan. 8, 1968; 8:45 a.m.]

TULANE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68–00225–00–46040 Applicant: Tulane University, Tulane University Station, New Orleans, La. 70118. Article: Electron microscope spare parts, consisting of various electron tubes, gaskets, signal lamps, etc. Manufacturer: Siemens AG, West Germany. Intended use of article: The spare parts will be used as replacement parts for the applicant's Elmiskop model electron microscope. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which such articles are intended to be used, are being manufactured in the United States. Reasons: The application relates to various spare parts for an electron microscope, which was manufactured by Siemens AG, Federal Republic of Germany, and is in the possession of the applicant. These spare parts are uniquely designed to be used with the electron microscope for which they are intended to be used.

The Department of Commerce knows of no similar spare parts for electron microscopes, which are being manufactured in the United States and which are interchangeable with those to which the application relates.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68–230; Filed, Jan. 8, 1968; 8:45 a.m.]

UNIVERSITY OF SOUTH CAROLINA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68–00134–75–77095. Applicant: University of South Carolina, Purchasing Office, Columbia, S.C. 29208. Article: Electron-Electron Coincidence Spectrometer. Manufacturer: Incentive Research and Development AB, Sweden. Intended use of article: The article will be used to provide the major facility for dissertation research in low energy spectroscopy for the graduate program. Efforts in this field are in conversion electron-gamma directional correlation. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is a specially designed instrument for research in low energy nuclear phenomena, which was developed by a member of the Institute of Physics of the University of Stockholm, Sweden. Instruments used in this area of research are not commercially standard. They are usually constructed by the institution requiring such an instrument, or are built by a contractor on the basis of designs furnished by the institution. The applicant's invitation to bid on the instrument, which was sent to several domestic manufacturers, resulted in either negative replies or no response.

The Department of Commerce knows of no domestic manufacturer that is willing to accept a contract for the instrument required by the applicant and accept the responsibility for its performance according to the applicant's specifications. Accordingly, we find that no instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68–231; Filed, Jan. 8, 1968; 8:45 a.m.]

STATE UNIVERSITY OF NEW YORK AT BUFFALO

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68–00109–33–46040. Applicant: State University of New York at Buffalo, 3435 Main Street, Buffalo, N.Y. 14214. Article: Electron Microscope Elmiskop IA, spare parts kit, high resolution kit/short focal length. Manufacturer: Siemens A.G., West Germany. Intended use of article: Studies in the nature and pathogenesis of amyloidosis, studies of the ultrastructure of amyloid fibrils; anatomic patterns of osmotic water flow across the proximal tubule of necturus kidney; graduate and undergraduate instruction. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article provides a guaranteed resolution of 5 Angstroms. The only known comparable domestic instrument, the Model EMU–4 electron microscope manufactured by the Radio Corporation of America (RCA), provides a guaranteed resolution of 8 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolution.) For the purposes for which the foreign article is to be used, we find that the additional resolving capability of the foreign article is pertinent. (2) The foreign article provides accelerating voltages of 40, 60, 80, and 100 kilovolts, whereas the RCA Model EMU–4 provides only accelerating voltages of 50 and 100 kilovolts. It has been experimentally established that the lower accelerating voltages afford optimum contrast for unstained specimens and that the voltages intermediate between 50 and 100 kilovolts afford optimum contrast for negatively stained specimens. The additional accelerating voltages provided by the foreign article are pertinent to the purposes for which such article is intended to be used.

For the foregoing reasons, we find that the RCA Model EMU–4 electron microscope is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68–232; Filed, Jan. 8, 1968; 8:45 a.m.]

UNIVERSITY OF PENNSYLVANIA SCHOOL OF DENTAL MEDICINE

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68–00163–33–46040. Applicant: University of Pennsylvania School of Dental Medicine, 4001 Spruce Street, Philadelphia, Pa. 19104. Article: Hitachi Model HU–11C Ultra High Resolution Electron Microscope. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: Applicant states:

> The electron miscroscope will be used by investigators in the Departments of Pathology and Microbiology at the Dental School of the University of Pennsylvania. It will be used both for selected research problems of the staff and for the training of graduate students at the Ph. D. level. * * *

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article provides a guaranteed resolution of 5 Angstroms. The only known comparable domestic instrument, the Model EMU–4 electron microscope manufactured by the Radio Corporation of America (RCA), provides a guaranteed resolution of 8 Angstroms. (The smaller the numerical rating in terms of Angstroms, the better the resolution.) For the purposes for which the foreign article is intended to be used, the difference in resolving capabilities between the foreign article and the RCA Model EMU–4 is pertinent to the purposes for which the foreign article is intended to be used. (2) The foreign article provides accelerating voltages of 25, 50, 75, and 100 kilovolts, whereas the RCA Model EMU–4 electron microscope provides only two accelerating voltages, 50 and 100 kilovolts. It has been experimentally established that the lower accelerating voltage provided by the foreign article affords optimum contrast for thin unstained specimens and that the accelerating voltage intermediate between 50 and 100 kilovolts affords optimum contrast for negatively stained specimens. For the purposes for which the foreign article is intended to be used, the 25 and 75 kilovolt accelerating voltages provided by the foreign article are pertinent.

For the foregoing reasons, we find that the RCA Model EMU–4 electron microscope is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68–233; Filed, Jan. 8, 1968; 8:45 a.m.]

UNIVERSITY OF CALIFORNIA, LAWRENCE RADIATION LABORATORY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68–00164–75–16600. Applicant: University of California, Lawrence Radiation Laboratory, East End of Hearst Avenue, Berkeley, Calif. 94720. Article: Dilution Refrigerator HE–3/HE–4, Model Mark III B, Mass Spectrometer, Resistance Bridge. Manufacturer: Oxford Instrument Co., Ltd., England. Intended use of article: For use in nuclear magnetic resonance experiments, symmetry test experiments, and at a later stage to produce polarized targets. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The applicant intends to use the foreign article for research in the cryogenic region of 0.05 degree Kelvin, which is equivalent to minus 273.13 degrees Centigrade. We know of no other method of achieving the required temperature, than through the use of HE–3/HE–4 dilution refrigerators such as the apparatus to which the application relates. The Department

of Commerce knows of no combination of mass spectrometer and HE-3/HE-4 dilution refrigerator, which is being manufactured in the United States.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68-234; Filed, Jan. 8, 1968; 8:45 a.m.]

UNIVERSITY OF HOUSTON ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cutural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical, Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 68-00236-33-73610. Applicant: University of Houston, Cullen Boulevard, Houston, Tex. 77004. Article: Recording volumetric spore trap. Manufacturer: Burkhard Manufacturing Co., Ltd., United Kingdom. Intended use of article: Applicant states: "(The article will be used for) collection of fungal spores." Application received by Commissioner of Customs: November 16, 1967.

Docket No. 68-00237-90-54700. Applicant: Research Foundation of State University of New York (College of Forestry), College Campus, Syracuse, N.Y. 13210. Article: Optical Scanner, Domtar Printograph Mark III. Manufacturer: Testing Machines, International of Canada, Ltd., Canada. Intended use of article: The article will be used to evaluate the printability of paper and provide fundamental information on the factors affecting printing. Application received by Commissioner of Customs: November 16, 1967.

Docket No. 68-00238-00-46040. Applicant: The Public Health Research Institute of the City of New York, Inc., Foot of East 16th Street, New York, N.Y. 10009. Article: Electron Microscope Accessory, Decontamination Device, Model Number 171 085. Manufacturer: Siemens Aktiengesellschaft, West Germany. Intended use of article: Applicant states: "Modification of Siemens Electron Microscope". Application received by Commissioner of Customs: November 16, 1967.

Docket No. 68-00239-33-46040. Applicant: Catholic University of America, Department of Biology, 620 Michigan Avenue NE., Washington, D.C. 20017. Article: Electron Microscope, Model EM9A, with set of recommended parts. Manufacturer: Carl Zeiss, West Germany. Intended use of article: Applicant states: "Instrument to be used for staff and student research projects in Biology, as well as in course work." The application further shows the electron microscope will be used for teaching a large number of students beginning in January 1968. Application received by Commissioner of Customs: November 17, 1967.

Docket No. 68-00240-33-46040. Applicant: Western Reserve University, 2220 Cummington, Cleveland, Ohio 44106. Article: Electron Microscope, Model EM6B with Plate Desiccator. Manufacturer: Associated Electrical Industries, Ltd., United Kingdom. Intended use of article: Applicant states:

Biological Research in the following areas: (1) Pathogenesis of acute inflammation of the vascular system employing high resolution electron microscopy and both current and experimental methods of cytochemistry; (2) studies of red blood cell membrane structure and the aggregation of polyriboscomes under certain experimental conditions utilizing negative staining techniques requiring the ultimate in resolution for a wide range of specimens.

Application received by Commissioner of Customs: November 17, 1967.

Docket No. 68-00241-00-77095. Applicant: The University of Michigan, Purchasing Office, Research Administration Building, Ann Arbor, Mich. 48105. Article: Large (6 inch) diameter Fabra-Perot etalon plates and 1 centimeter quartz spacer, Model 674A/1. Manufacturer: Optical Surfaces, Ltd., United Kingdom. Intended use of article: Applicant states:

The 6" diameter Fabry-Perot plates and the 1 centimeter spacer for the plates will be used in a Fabry-Perot spectrometer in order to make airglow measurements of the night sky. This instrument is part of the Aeronomy program's airglow study facility which is established in order to train students in the techniques for making airglow measurements. The instrument will be operated by graduate students at the Peach Mountain facility of The University of Michigan.

Application received by Commissioner of Customs: November 17, 1967.

CHARLEY H. DENTON,
Director, Office of Scientific and Technical Equipment Business and Defense Services Administration.

[F.R. Doc. 68-235; Filed, Jan. 8, 1968; 8:45 a.m.]

Maritime Administration

[Report 17]

LIST OF FOREIGN FLAG VESSELS ARRIVING IN NORTH VIETNAM ON OR AFTER JANUARY 25, 1966

SECTION 1. The President has approved a policy of denying the carriage of U.S. Government-financed cargoes shipped from the United States on foreign flag vessels which called at North Vietnam ports on or after January 25, 1966.

The Maritime Administration is making available to the appropriate U.S. Government Departments the following list of such vessels which arrived in North Vietnam ports on or after January 25, 1966, based on information received through December 28, 1967. This list does not include vessels under the registration of countries, including the Soviet Union and Communist China, which normally do not have vessels calling at U.S. ports.

FLAG OF REGISTRY AND NAME OF SHIP	*Gross Tonnage*
Total, all flags (47 ships)	325,820
Polish (27 ships)	209,301
Andrzej Strug	6,919
Beniowski	10,443
Djakarta	6,915
Energetyk	10,876
Florian Ceynowa	6,784
General Sikorski	6,785
Hanka Sawicka	6,944
Hanoi	6,914
Hugo Kollataj	3,755
Jan Matejko	6,748
Janek Krasicki	6,904
Jozef Conrad	8,730
Kapitan Kosko	6,629
Kochanowski	8,231
Konopnicka	9,690
Kraszewski	10,363
Lelewel	7,817
Marceli Nowotko	6,660
Marian Buczek	7,053
*Moniuszko	9,247
Norwid	5,512
Phenian	6,923
*Przyjazn Narodow	8,876
Stefan Okrzeja	6,620
Transportowiec	10,854
Wieniawski	9,190
Wladyslaw Broniewski	6,919
British (13 ships)	70,102
Ardrossmore	5,820
Ardrowan	7,300
Dartford	2,739
Greenford	2,964
Isabel Erica	7,105
Kingford	2,911
Rochford	3,324

See footnote on next page.

Flag of Registry and Name of Ship	Gross tonnage
**Rosetta Maud (trip to North Vietnam under ex-name, Ardtara—British)	5,795
Santa Granda	7,229
Shienfoon	7,127
Shirley Christine	6,724
Taipleng	5,676
Yungfutary	5,388
Cypriot (4 ships)	28,844
Acme	7,173
**Agenor (trips to North Vietnam—Greek)	7,139
Amon	7,229
Antonia II	7,303
Italian (1 ship)	8,380
Agostino Bertani	8,380
Maltese (1 ship)	7,304
Amalia	7,304
Panamanian (1 ship)	1,889
**Salamanca (trips to North Vietnam under ex-name, Milford—British)	1,889

SEC. 2. In accordance with approved procedures, the vessels listed below which called at North Vietnam on or after January 25, 1966, have reacquired eligibility to carry U.S. Government-financed cargoes from the United States by virtue of the persons who control the vessels having given satisfactory certification and assurance:

(a) That such vessels will not, thenceforth, be employed in the North Vietnam trade so long as it remains the policy of the U.S. Government to discourage such trade and;

(b) That no other vessels under their control will thenceforth be employed in the North Vietnam trade, except as provided in paragraph (c) and;

(c) That vessels under their control which are covered by contractual obligations, including charters, entered into prior to January 25, 1966, requiring their employment in the North Vietnam trade shall be withdrawn from such trade at the earliest opportunity consistent with such contractual obligations.

Flag of Registry	Number of ships
a. Since last report: None.	
b. Previous reports:	
British	1

SEC. 3. The following number of vessels have been removed from this list since they have been broken up.

Flag of Registry	Broken up
British	1
Cypriot	2
Greek	1

* Added to report No. 16 appearing in the FEDERAL REGISTER issue of November 30, 1967.

** Ships appearing on the list which have made no trips to Cuba under the present registry.

By order of the Acting Maritime Administrator.

Date: January 3, 1968.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 68-350; Filed, Jan. 8, 1968; 8:52 a.m.]

Office of the Secretary

SOFTWOOD LUMBER STANDARD

Notice of Issuance of Recommended Standard for Softwood Lumber and Related Procedural Rules

Correction

In F.R. Doc. 67-15031, appearing at page 20992 of the issue for Friday, December 29, 1967, the following correction should be made:

In paragraph 7 in the first column on page 20993, the third sentence is corrected to read as follows: "Any persons present at the hearing may, by motion addressed to the presiding officer made within 5 days after the date the transcript becomes available to him, move to correct the transcript in any respect he believes it to be inaccurate.".

In table 1 on page 20995, the item "2¼" in the last column for "Stepping" should be corrected to read "7¼."

WATCHES AND WATCH MOVEMENTS

Rules Governing Allocation of Quotas for Calendar Year 1968 Among Producers Located in Virgin Islands and Guam

On December 2, 1967, the Departments of Commerce and of the Interior published a joint notice of proposed rule making under Public Law 89-805, setting out the proposed formula for allocation of 1968 watch quotas among producers located in the Virgin Islands and Guam (32 F.R. 16538). Interested parties were invited to participate in the proposed rule making by submitting their views within 15 days from the publication date.

The Departments have reviewed carefully the comments received and on this basis have concluded that two provisions of the proposed rule should be modified.

First, it was proposed that allocations among eligible watch producers during calendar year 1969 might take into account the nature of the watch assembly operations which these producers performed during calendar year 1968. A complete watch assembly was divided into 18 operations each of which was assigned a specific number of points designed to reflect the relative degree of skill and amount of time required to perform the particular operation. A majority of those commenting on the proposed rule were opposed to a reliance on watch assembly operations as a factor in making future allocations. Reasons given included difficulty of verification, difficulty of providing uniform standards and the possibility that this would encourage firms to use more labor saving machines to the detriment of employment in the insular possessions. The Departments are still of the opinion that the nature of the watch assembly operations performed by a firm is one of the factors indicative of the contribution which it makes to the economy of the islands. However, the Departments recognize that the decision whether to rely on this factor in future allocations will depend on whether the administrative problems raised can be overcome. Time does not permit further consideration of this matter, prior to issuing allocations for calendar year 1968, and it would be unfair to use this factor in making 1969 allocations without having given all concerned an opportunity to govern their 1968 operations accordingly. For this reason, the Departments will announce at a later date if they propose to rely on the nature of watch assembly operations performed in making future allocations and how this factor would be administered but this decision will not affect duty-free allocations for calendar year 1969.

Second, the Departments continue to believe that firms whose quotas were substantially unused in 1967 should be ineligible to receive a quota in 1968, since the quota they would be entitled to receive under the "Production-FICA" formula would be so small as to be of questionable viability, thereby merely resulting in further waste of quotas. However, the Departments have been persuaded on the basis of some of the comments received that it would be more fair and equitable to predicate ineligibility on the basis of production and shipment history during the entire calendar year 1967 than to rely, as was proposed, on performance during the first 10 months of 1967, and to provide that those firms eligible for a quota in 1968 will receive an initial quota allocation of not less than 5,000 units.

Interested parties were afforded an opportunity to participate fully in rule making as a result of the joint notice published in the FEDERAL REGISTER on December 2, 1967. Watch producers located in the Virgin Islands and Guam are anxious to receive their initial quota allocations as soon as possible in order to avoid any interruption in their assembly operations. Prompt issuance of a final rule for 1968 quota allocations is also necessary to enable these firms to contract for their inventory requirements and to accept purchase orders for their 1968 production. Thus, time is of the essence in announcing rules which will determine the eligibility of a firm to receive a quota and the terms under which quotas are to be allocated.

Therefore, to the extent that the requirements of section 4 of the Administrative Procedure Act as to notice, public procedures, and publication 30 days prior to effectiveness would apply to the following rules, the Departments have determined that such requirements

are impracticable, unnecessary, and contrary to the public interest and that the following rules are to be final upon publication of this notice:

SECTION 1. Upon effective date of this notice, or as soon thereafter as practicable, each watch producer located in the Virgin Islands and Guam which received a duty-free watch quota allocation for calendar year 1967, will receive an initial quota allocation for calendar year 1968 equal to 50 percent of the number of watch units assembled by such firm in the particular territory and entered duty-free into the customs territory of the United States during the first 10 months of calendar year 1967, or 5,000 units, whichever is greater: *Provided, however,* That any firm which entered duty-free into the customs territory of the United States during calendar year 1967, a number of watch units assembled by it which is less than 15,000 units will not be eligible to receive a quota for calendar year 1968. In cases where the determination of eligibility cannot be made on the basis of entry records presently available such a determination and the allocation of an initial quota will be postponed until such time as the U.S. Customs entry records through December 31, 1967, are available.

SEC. 2. Each firm to which an initial quota has been allocated pursuant to section 1, hereof must, on or before April 1, 1968, have assembled and entered duty-free into the customs territory of the United States at least 30 percent of its initial quota allocation. Any firm failing to enter duty-free into the customs territory of the United States on or before April 1, 1968, a number of watch units assembled by it in a particular territory equal to, or greater than, 30 percent of the number of units initially allocated to such firm for duty-free entry from that territory will, upon receipt of a show cause order from the Departments, be given an opportunity, within 30 days from such receipt, to show cause why the duty-free quota which it would otherwise be entitled to receive should not be canceled or reduced by the Departments. Such a show cause order may also be issued whenever there is reason to believe that shipments through December 31, 1968 by any firm under the quota allocated to it for calendar year 1968 will be less than 80 percent of the number of units allocated to it.

Upon failure of any such firm to show good cause, deemed satisfactory by the Departments, why the remaining, unused portion of the quota to which it would otherwise be entitled should not be canceled or reduced, said remaining, unused portion of its quota shall be either canceled or reduced, whichever is appropriate under the show cause order. In the event of a quota cancelation or reduction under this section, the Departments shall promptly reallocate the quota involved, in a manner best suited to contribute to the economy of the islands, among the remaining firms: *Provided, however,* That, if in the judgment of the Departments it is appropriate, competitive bids from new firms may, in lieu of such reallocation, be invited for any part or all of any unused portions of quotas remaining unallocated as a result of cancellation or reduction hereunder.

SEC. 3. The annual quotas for calendar year 1968 will be allocated as soon as practicable after April 1, 1968, on the basis of the number of units assembled by each firm in the particular territory and entered by it duty-free into the customs territory of the United States during calendar year 1967, and the total dollar amount of wages subject to FICA taxes paid by such firm in the particular territory during calendar year 1967 which are attributable to its watch operation. In making allocations under this formula, equal weight will be assigned to production and shipment history and to wages subject to FICA taxes.

SEC. 4. All data required must be supplied, as a condition for allocations and are subject to verification by the Departments. Application forms will be mailed to recipients of initial quota allocations as soon as practicable.

SEC. 5. The rules restricting transfers of duty-free quotas issued on July 26, 1967, and published in the FEDERAL REGISTER on July 28, 1967, (32 F.R. 11048) are hereby incorporated by reference as applicable to transfers of quotas issued during calendar year 1968.

SEC. 6. Any interested party has the right to petition for the amendment or repeal of these rules and may seek relief from the application of any of their provisions upon a showing of good cause under the procedures relating to reviews by the Secretaries of Commerce and the Interior which were published in the FEDERAL REGISTER on November 17, 1967 (32 F.R. 15818).

DAVID S. BLACK,
Under Secretary,
Department of the Interior.

LAWRENCE C. MCQUADE,
Assistant Secretary for Domestic and International Business, Department of Commerce.

JANUARY 4, 1968.

[F.R. Doc. 68-362; Filed, Jan. 5, 1968; 4:06 p.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

AQUAFINE CORP.

Notice of Withdrawal of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Aquafine Corp., 1230 Sunset Boulevard, Los Angeles, Calif. 90026, has withdrawn its petition (FAP 7M2150), notice of which was published in the FEDERAL REGISTER of August 4, 1967 (32 F.R. 11350), proposing that § 121.3006 *Ultraviolet radiation for the processing and treatment of food* be amended to provide for the safe use of ultraviolet radiation in the reduction of molds and yeasts within sugar solutions.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-283; Filed, Jan. 8, 1968; 8:49 a.m.]

C. J. PATTERSON CO.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 8A2238) has been filed by C. J. Patterson Co., 3947 Broadway, Kansas City, Mo. 64111, proposing that § 121.1047 *Calcium stearyl-2-lactylate* be amended to expand the description of and change the specifications for the additive by revising paragraphs (a) and (b) to read as follows:

(a) The additive, which is a mixture of calcium salts of stearyol lactylic acids and minor proportions of other calcium salts of related acids, is manufactured by the reaction of stearic acid and lactic acid and conversion to the calcium salts.

(b) The additive meets the following specifications:

Acid number: 50–86.
Calcium content: 4.2%–5.2%.
Lactic acid content: Minimum 32%.
Ester number: 125–164.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-284; Filed, Jan. 8, 1968; 8:49 a.m.]

C. K. WILLIAMS & CO., DIVISION OF CHAS. PFIZER & CO., INC.

Notice of Withdrawal of Petition for Food Additive Chromium Oxide Green

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), C. K. Williams & Co., Inc., 640 North 13th Street, Easton, Pa. 18043, has withdrawn its petition (FAP 1R0527), notice of which was published in the FEDERAL REGISTER of August 11, 1961 (26 F.R. 7299), proposing the issuance of a regulation to provide for the

safe use of chromium oxide green as a colorant in food containers.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-285; Filed, Jan. 8, 1968; 8:49 a.m.]

CHEMAGRO CORP.

Notice of Withdrawal of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), the following notice is issued:

In accordance with § 120.8 *Withdrawal of petitions without prejudice* of the pesticide regulations (21 CFR 120.8), Chemagro Corp., Post Office Box 4913, Kansas City, Mo. 64120, has withdrawn its petition (PP 7F0613), notice of which was published in the FEDERAL REGISTER of June 21, 1967 (32 F.R. 8824), proposing the establishment of a tolerance of 0.1 part per million for negligible residues of the fungicide *p*-(dimethylamino) benzenediazo sodium sulfonate in or on the raw agricultural commodities avocados, cottonseed, pineapple, sugar beet roots, and sugar beet tops.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-286; Filed, Jan. 8, 1968; 8:49 a.m.]

CHIPMAN CHEMICAL CO., INC.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0668) has been filed by the Chipman Chemical Co., Inc., Post Office Box 1065, Burlingame, Calif. 97010, proposing the establishment of tolerances for residues of the insecticide *S*-(6-chloro-3-(mercaptomethyl)-2-benzoxazolinone) *O,O*-diethyl phosphorodithioate in or on the raw agricultural commodities: Apples, grapes, and pears at 10 parts per million; and cottonseed and potatoes at 0.2 part per million.

The analytical methods proposed in the petition for determining residues of the insecticide are: (1) An electron-capture gas chromatographic technique; and (2) a colorimetric technique based on hydrolysis to give diethyl dithophosphoric acid which is then determined colorimetrically as the yellow cupric complex.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-287; Filed, Jan. 8, 1968; 8:49 a.m.]

E. I. DU PONT DE NEMOURS & CO.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0671) has been filed by E. I. du Pont de Nemours and Co., Wilmington, Del. 19898, proposing the establishment of tolerances for residues of the insecticide *S*-methyl *N*-[(methylcarbamoyl)-oxy] thioacetimidate in or on the raw agricultural commodities corn fodder or forage from field corn, sweet corn, and popcorn at 10 parts per million.

The analytical method proposed in the petition for determining residues of the insecticide involves extraction of the residue, alkaline hydrolysis to *S*-methyl-*N*-hydroxythioacetimidate, and measurement of the latter by a microcoulometric gas chromatographic technique with a sulfur detection cell.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-288; Filed, Jan. 8, 1968; 8:49 a.m.]

ELANCO PRODUCTS CO.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0664) has been filed by Elanco Products Co., a Division of Eli Lilly and Co., Indianapolis, Ind. 46206, proposing the establishment of tolerances for negligible residues of the herbicide trifluralin in or on the raw agricultural commodities cottonseed, forage legumes, fruiting vegetables, leafy vegetables, peanuts, safflower seed, and seed and pod vegetables at 0.05 part per million.

The analytical method proposed in the petition for determining residues of trifluralin is a gas chromatographic technique.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-289; Filed, Jan. 8, 1968; 8:50 a.m.]

FMC CORP.

Notice of Withdrawal of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), the following notice is issued:

In accordance with § 120.8 *Withdrawal of petitions without prejudice* of the pesticide regulations (21 CFR 120.8), FMC Corp., Niagara Chemical Division, 100 Niagara Street, Middleport, N.Y. 14105, has withdrawn its petition (PP 7F0550), notice of which was published in the FEDERAL REGISTER of February 8, 1967 (32 F.R. 2661), proposing the establishment of a tolerance of 0.5 part per million for residues of a fungicide, which is a mixture of 5.2 parts by weight of ammoniates of ethylenebis(dithiocarbamato) zinc with one part by weight of ethylenebis(dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides, in or on the raw agricultural commodities: Carrots, sweet corn, cotton, peanuts, pecans, potatoes, and sugar beets.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-290; Filed, Jan. 8, 1968; 8:50 a.m.]

FERRO CORP.

Notice of Withdrawal of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Ferro Corp., 4150 East 56th Street, Cleveland, Ohio 44105, has withdrawn its petition (FAP 2R0548), notice of which was published in the FEDERAL REGISTER of May 9, 1962 (27 F.R. 4430), proposing the issuance of a regulation to provide for the safe use of the following substances as colorants for polymeric films that contact food: Aluminum oxide, chromium oxide, cobalt oxide, magnesium oxide, and zinc oxide.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-291; Filed, Jan. 8, 1968; 8:50 a.m.]

MONSANTO CO.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0667) has been filed by the Monsanto Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166, proposing the establishment of a tolerance of 0.3 part per million for negligible residues of the herbicide 3,4-dichloropropionanilide in or on the raw agricultural commodity rice.

The analytical method proposed for determining residues of the herbicide consists of extraction with benzene, clarification and cleanup of the extract, and evaporative concentration followed by a

simultaneous hydrolysis and steam distillation of the resulting 3,4-dichloroaniline. The latter compound is diazotized and then coupled with *N*-(1-naphthyl)-ethylenediamine. The absorbance of the resulting dye is measured at 555 millimicrons.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-292; Filed, Jan. 8, 1968; 8:51 a.m.]

MONSANTO CO.

Notice of Withdrawal of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), the following notice is issued:

In accordance with § 120.8 *Withdrawal of petitions without prejudice* of the pesticide regulations (21 CFR 120.8), Monsanto Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166, has withdrawn its petition (PP 8F0654), notice of which was published in the FEDERAL REGISTER of November 15, 1967 (32 F.R. 15721), proposing the establishment of a tolerance of 0.3 part per million for residues of the herbicide trichlorobenzyl chloride in or on the raw agricultural commodity corn (field, sweet, and popcorn).

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-293; Filed, Jan. 8, 1968; 8:51 a.m.]

RANCHERS COTTON OIL

Notice of Filing of Petition for Food Additive Ammoniated Cottonseed Meal

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Ranchers Cotton Oil, Post Office Box 248, Fresno, Calif. 93708, proposing the issuance of a regulation to provide for the safe use of ammoniated cottonseed meal in the feed of ruminants as a source of protein and/or as the sole source of nonprotein nitrogen, in a total amount not to exceed 20 percent of the total ration.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-294; Filed, Jan. 8, 1968; 8:51 a.m.]

VELSICOL CHEMICAL CORP.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0666) has been filed by the Velsicol Chemical Corp., 341 East Ohio Street, Chicago, Ill. 60611, proposing the establishment of tolerances for the combined residues of the herbicide dicamba (3,6-dichloro-o-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-o-anisic acid in or on the raw agricultural commodities barley, corn, oats, and wheat at 0.5 part per million.

The analytical method proposed in the petition for determining residues of dicamba and its metabolite 3,6-dichloro-5-hydroxy-o-anisic acid is an electron-capture gas chromatographic technique.

Dated: December 29, 1967.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 68-295; Filed, Jan. 8, 1968; 8:51 a.m.]

Office of the Secretary

PUBLIC HEALTH SERVICE

Statement of Organization and Functions and Delegations of Authority

Part 4 (Public Health Service) of the Statement of Organization and Functions and Delegations of Authority for the Department of Health, Education, and Welfare (32 F.R. 9739 et seq., July 4, 1967), as amended, is hereby amended as follows:

With regard to section 4-B, *Organization and Functions*—Under the heading National Library of Medicine (2300) delete all paragraphs through *National Medical Audiovisual Center (2370)* and insert:

The National Library of Medicine (1) assists the advancement of medical and related sciences through the collection, dissemination, and exchange of information important to the progress of medicine and health, (2) serves as a national medical information resource for medical education, research, and service activities of Federal and private agencies, organizations, institutions, and individuals, (3) publishes and distributes guides to medical literature and audiovisual materials in the form of catalogs, indexes, and bibliographies, (4) develops, produces, and disseminates audiovisual materials and systems and other aids to medical education, research, and practice, (5) supports the translation and publication of biomedical literature, (6) provides support for medical library development and for training of biomedical librarians and other health information specialists, (7) conducts and supports research in techniques and methods for recording, storing, retrieving, and communicating health information, and (8) provides technical consultation services and research assistance.

Office of the Director (2311). (1) Directs and coordinates library activities, (2) advises the Surgeon General on PHS policy relating to the management and control of biomedical communication media, (3) studies, identifies, and defines needs in biomedical communications and (4) provides the secretariat for the NLM Board of Regents.

Office of Public Information and Publications Management (2317). (1) Provides information services for the biomedical community and the general public on NLM programs, services, and products and on biomedical communications through press releases, pamphlets, exhibits, and other media, and (2) coordinates the publication and distribution of NLM publications.

Office of Administrative Management (2319). Provides overall management and administrative services for the Library.

Office of the Associate Director for Research and Development (2321). (1) Conducts research and development in biomedical communications, with emphasis on information sciences, to improve the means of communication of information in the health sciences, (2) applies technology to improvement of library operations, of biomedical information systems, and of communications practices of individual professionals, (3) conducts research and development in document and information handling networks, in graphic image storage, retrieval, and transmission, in query languages, and man and machine communication, (4) applies operations research techniques to NLM programs and operations, and (5) evaluates ongoing systems and programs.

Office of Computer and Engineering Services (2325). (1) Performs systems management of computer applications and operations, systems analysis and design in support of ongoing services, and computer programing services in support of all NLM operations, (2) operates and maintains digital computer, phototypesetting, and related data processing, storage, retrieval, and transmission equipment, (3) establishes production schedules, and performs production control for NLM machine-based operations, and (4) produces and distributes magnetic tapes to MEDLARS search centers and other authorized users in the United States and abroad.

Office of the Associate Director for Extramural Programs (2331). (1) Administers programs to augment and strengthen the health sciences libraries of the nation and to improve biomedical communications through grants to, or contracts with, nonfederal and private institutions, (2) analyzes and evaluates extramural programs in relation to program objectives and national needs to achieve balanced and effective support, and (3) provides grants management,

grants processing, and administrative management services.

Research and Training Division (23313). (1) Supports the conduct of research and development projects to: (a) Gain a better understanding of the production, processing, and communication patterns of information in the biomedical and related sciences, (b) identify the needs that institutions and workers in the health sciences have for this information, and (c) apply this new knowledge to the development of more efficient and effective communications modalities, (2) supports research projects in the history of life sciences, (3) supports training projects to increase the availability of medical librarians and health communications specialists, and makes awards to individuals in the form of traineeships and fellowships for advance training and research in health information, (4) makes special awards to qualified scientists for the purpose of preparing comprehensive studies and critical reviews of the literature, and (5) provides secretariat services and staff assistance to advisory committees in these program areas.

Facilities and Resources Division (23315). (1) Administers programs of grants for: (a) Constructing, renovating, and expanding health sciences libraries throughout the country, (b) augmenting the basic resources of these libraries, and (c) developing a national system of regional medical libraries, and (2) provides secretariat services and staff assistance to advisory committees in these program areas.

Publications and Translations Division (23317). (1) Supports through grants and contracts the preparation and publication of translations, indexes, bibliographies, abstracts, and other publications to increase the availability and facilitate the utilization of published information in the health sciences, and (2) provides secretariat services and staff assistance to advisory committees in these program areas.

Office of the Associate Director for Library Operations (2341). (1) Administers the Library's direct operations, (2) analyzes and evaluates direct operations in relation to program needs, and (3) plans and administers a national biomedical library network.

Technical Services Division (23413). (1) Recommends policy on scope and coverage of the collection, (2) acquires and catalogs materials for the collection, (3) develops and maintains national and international publication exchange relationships, (4) publishes catalogs of the Library's acquisitions and holdings, and (5) performs studies directed toward mechanization and automation of technical services.

Reference Services Division (23415). (1) Provides reference services, assistance, and facilities; (2) administers the interlibrary loan program, (3) maintains, circulates, and preserves the Library's collection, (4) provides photographic and photocopying services, and (5) operates a graphic image storage and retrieval program.

Bibliographic Services Division (23417). (1) Analyzes and indexes for publication the literature of medicine and allied sciences, (2) prepares research bibliographies on special subjects, (3) analyzes and prepares requests for special bibliographies for computer processing, (4) develops recurring bibliographic services, (5) develops and produces Index Medicus and related publications, and (6) develops and maintains the medical subject heading authority list.

History of Medicine Division (23419). (1) Acquires, organizes, and services the historical source materials of the Library, (2) performs research in the history of medicine, (3) contributes to historical studies by publishing catalogs, bibliographies, and other aids to medical-historical scholarship, and (4) collects, catalogs, and controls the Library's historical collection of pictorial materials including films, prints, photographs, slides, and paintings.

Office of the Associate Director for Specialized Information Services (2353). (1) Coordinates the development and operation of specialized information services throughout the NLM, (2) plans, develops, and operates a national toxicological information system, and (3) develops and administers a program to organize and analyze published information on the effects of drugs and chemicals on man, and prepares special bibliographies and reports on that subject.

Office of the Associate Director for Audiovisual-Telecommunications (2371). (1) Plans, directs, coordinates and evaluates a national program in biomedical audiovisual and telecommunications, and (2) provides program management support for the National Medical Audiovisual Center.

National Medical Audiovisual Center (23712). (1) Operates the central facility in the Public Health Service for the development, production, distribution, evaluation, and utilization of motion pictures, videotapes, and other audiovisual forms, (2) coordinates a comprehensive audiovisual program for the Service to assure maximum responsiveness and economy of funds and manpower, (3) provides consultation and assistance in the development of specialized audiovisual activities, (4) encourages the production, dissemination, and utilization of medical films and other audiovisuals in the schools of health professions and elsewhere, (5) operates a national clearinghouse and archival program, and (6) acts as a national and international film and videotape center for the distribution and exchange of biomedical audiovisuals.

Dated: January 3, 1968.

DONALD F. SIMPSON,
Assistant Secretary for Administration.

[F.R. Doc. 68-297; Filed, Jan. 8, 1968; 8:51 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIRPORTS BRANCH, BOSTON AREA OFFICE

Notice of Relocation

Notice is hereby given that on or about January 22, 1968, the Airports Branch of the Boston Area Office located in the General Aviation Terminal Building at Logan International Airport, East Boston, Mass., will be relocated to Building 24, Northwest Industrial Park, Middlesex Turnpike, Burlington, Mass. Services presently rendered by this office will continue to be provided at the new location.

(Sec. 313(a), 72 Stat. 752, 49 U.S.C. 1354)

Issued in New York, N.Y., on December 21, 1967.

GEORGE M. GARY,
Director, Eastern Region.

[F.R. Doc. 68-253; Filed, Jan. 8, 1968; 8:47 a.m.]

AIR CARRIER DISTRICT OFFICE

Notice of Relocation

Notice is hereby given that on or about January 22, 1968, the Air Carrier District Office located at 161 Prescott Street, East Boston, Mass., will be relocated to the General Aviation Terminal Building, Logan International Airport, East Boston, Mass. Services presently rendered by this office will continue to be provided at the new location.

(Sec. 313(a), 72 Stat. 752, 49 U.S.C. 1354)

Issued in New York, N.Y., on December 21, 1967.

GEORGE M. GARY,
Director, Eastern Region.

[F.R. Doc. 68-254; Filed, Jan. 8, 1968; 8:47 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 18650; Order E-26207]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order in Regard to Specific Commodity Rates

JANUARY 2, 1968.

Issued under delegated authority.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA), and adopted pursuant to the provisions of

Resolution 590 dealing with specific commodity rates.

The agreement, adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated December 13, 1967, as set forth in the attachment hereto,[1] names additional rates under existing commodity descriptions and cancels rates which the carriers found unproductive. The new rates reflect reductions ranging from 35.5 to 61.4 percent and are consistent with the present level of commodity rates within the area.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval thereof is conditioned as hereinafter ordered.

Accordingly, it is ordered, That:

Agreement CAB 19654, R–49 through R–64, be approved, provided approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68–306; Filed, Jan. 8, 1968; 8:51 a.m.]

[Docket Nos. 19045, 19046]

PAN AMERICAN WORLD AIRWAYS, INC.

Notice of Prehearing Conference

Applications of Pan American World Airways, Inc., for disclaimer of jurisdiction, or, in the alternative, approval under section 408 of the Federal Aviation Act of 1958, as amended.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 16, 1968, at 10 a.m. (e.s.t.) in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Associate Chief Examiner Ralph L. Wiser.

Dated at Washington, D.C., January 3, 1968.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 68–307; Filed, Jan. 8, 1968; 8:51 a.m.]

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[1] Filed as part of the original document.

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 17915—17917; FCC 67–1328]

GRAPHIC PRINTING CO., INC., ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of: the Graphic Printing Co., Inc., Portland, Ind., Requests: 100.9 mc, No. 265; 3 kw (H), 3 kw (V); 300 feet, Docket No. 17915, File No. BPH–5788; Glenn West, Portland, Ind., Requests: 100.9 mc, No. 265; 3 kw (H), 3 kw (V); 180 feet, Docket No. 17916, File No. BPH–5820; Soundvision Broadcasting, Inc., Portland, Ind., Requests: 100.9 mc, No. 265; 3 kw (H), 3 kw (V); 300 feet, Docket No. 17917, File No. BPH–5899; for construction permits.

1. The Commission has under consideration the above captioned and described applications which are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the Glenn West proposal on the one hand and Graphic Printing and Soundvision on the other. Consequently, for the purposes of comparison, the areas and populations within the 1 mv/m contours together with the availability of other FM services of 1 mv/m or greater intensity in such areas will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Consideration of the programing proposals is required because of the substantial and material difference between the proposals in the amount of AM programing to be duplicated. Glenn West proposes approximately two-thirds duplicated programing while the other applicants propose independent operations. Therefore, evidence regarding program duplication will be admissible under the standard comparative issue. The showing permitted under the standard comparative issue when duplicated programing is proposed will be limited to evidence concerning the benefits to be derived from the proposed duplication, and a full comparison of the applicants' program proposals will not be permitted in the absence of a specific programing inquiry—Jones T. Sudbury 8 FCC 2d 360, FCC 67–614, (1967).

4. Each of the applicants is qualified to construct and operate as proposed. However, because of their mutual exclusivity, the Commission is unable to make a statutory finding that a grant of the subject applications would serve the public interest, convenience, and necessity, and is of the opinion that they must be designated for hearing in a consolidated proceeding on the issues set forth below.

It is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine which of the proposals would best serve the public interest.

2. To determine in the light of the evidence adduced pursuant to the foregoing issue, which of the applications for construction permit should be granted.

It is further ordered, That to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.221 (c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: December 13, 1967.

Released: December 28, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–311; Filed, Jan. 8, 1968; 8:52 a.m.]

[Docket Nos. 17932–17934; FCC 67–1365]

RUST CRAFT BROADCASTING CO. ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of: Rust Craft Broadcasting Co., Utica, N.Y., Docket No. 17932, File No. BPCT–3924; P. H., Inc., Utica, N.Y., Docket No. 17933, File No. BPCT–3952; Roy H. Park Broadcasting, Inc., Utica, N.Y., Docket No. 17934, File No. BPCT–3977; for construction permit for new television broadcast station.

1. The Commission has before it for consideration the above-captioned applications each requesting a construction permit for a new television broadcast station to operate on Channel 20, Utica, N.Y.

2. With respect to the issues set forth below the following considerations are pertinent:

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[1] Commissioner Loevinger concurring in the result.

a. Based on the information contained in the application of P. H., Inc., cash in excess of $363,392 will be needed for the construction and first-year operation of the proposed station, consisting of down payment on equipment—$92,669; first-year payments on equipment including interest—$80,621; building—$1,200; other items—$4,000; first-year cost of operation—$185,402. Since a proposed $100,000 bank loan from the Oneida National Bank and Trust Company of Central New York to the applicant does not contain any terms with respect to repayment and interest, the exact amount of cash required by the applicant cannot be determined. Moreover, the proposed bank loan does not meet the requirements of section III, paragraph 4(h), FCC Form 301, in that the loan is conditional since it is to be personally guaranteed by A. Richard Cohen, 25 percent stockholder of the applicant corporation, who is to support his guaranty with collateral acceptable to the bank. Mr. Cohen has not submitted a statement indicating his willingness to guaranty the loan and there is no indication as to what will be considered collateral acceptable to the bank and whether Mr. Cohen has the ability to provide such collateral.

b. P. H., Inc., also relies upon the availability of $11,650 in existing capital, a $250,000 loan from A. Richard Cohen and estimated first-year revenues of $206,960. While the applicant's balance sheet reveals liquid and current assets of $9,310, it also reveals liabilities in excess of $57,000. Since the current portion of such liabilities has not been segregated, as required by section III, paragraph 4(d), it cannot be determined whether any portion of the $9,310 will be available to finance the construction and first-year operation of the proposed station. P. H., Inc., has not furnished the Commission with a copy of the proposed $250,000 loan agreement signed by Mr. Cohen nor has the applicant submitted a copy of Mr. Cohen's balance sheet indicating his ability to meet his loan commitment. Furthermore, while the applicant has submitted information in an effort to support its estimate of revenues, the Commission does not believe that the information submitted does, in fact, demonstrate the soundness of the estimate of revenues as required by the Commission in Ultravision Broadcasting Co., FCC 65–581, 5 R.R. 2d 343. Accordingly, financial issues have been specified.

3. There appears to be a significant disparity in the proposed Grade B contours of the applicants. In accordance with the Commission's policy evidence with respect to which of the proposals would represent a more efficient use of the frequency may be adduced under the comparative issue.[1]

4. Rust Craft Broadcasting Co. and Roy H. Park Broadcasting, Inc., both propose to locate their main studios outside of the corporate limits of Utica, N.Y., at their respective transmitter sites, which are located at short distances from Utica. Both applicants state that a combined studio-transmitter location will result in a more efficient operation. The Commission is of the view that good cause has been shown for either applicant locating its main studios outside of the principal community and that the location proposed would not be inconsistent with the operation of the station in the public interest. We will, provide, therefore, that in the event of a grant of the application of Rust Craft Broadcasting Co. or the application of Roy H. Park Broadcasting, Inc., Commission consent to the proposed location of the main studios outside of Utica is granted, pursuant to section 73.613(b) of the rules.

5. Since Neptune Broadcasting Corp., a subsidiary of Rust Craft Broadcasting Co., operates CATV systems in Ohio and West Virginia and the Commission has issued a notice of inquiry into Developing Patterns of Ownership in the CATV Industry, Docket No. 17371, 7 FCC 2d 853, in the event of a grant of the application of Rust Craft Broadcasting Co., the grant shall be made without prejudice to whatever action the Commission may deem appropriate as a result of the pending proceeding in Docket No. 17371.

6. Rust Craft Broadcasting Co. and Roy H. Park Broadcasting, Inc., are qualified to construct, own and operate the proposed new television broadcast station and, except as indicated by the issues set forth below, P. H., Inc., is qualified to construct, own and operate the proposed new television broadcast station. The applications are, however, mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference. The Commission is, therefore, unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity and is of the opinion that they must be designated for hearing in a consolidated proceeding on the issues set forth below.

It is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications of Rust Craft Broadcasting Co., P. H., Inc., and Roy H. Park Broadcasting, Inc., are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine with respect to the application of P. H., Inc.:

(a) The terms and conditions upon which a $100,000 bank loan will be available to the applicant from The Oneida National Bank and Trust Company of Central New York.

(b) In the light of the evidence adduced pursuant to the foregoing, the amount of any additional cash needed by the applicant for the construction and first-year operation of the proposed station.

(c) The nature of the collateral required by the bank in connection with the proposed bank loan of $100,000 and whether A. Richard Cohen has available sufficient assets to provide such collateral.

(d) Whether P. H., Inc., has available liquid and current assets in excess of current liabilities with which to finance the construction and first-year operation of the proposed station.

(e) Whether A. Richard Cohen will undertake to lend $250,000 to the applicant and if so, whether he has available liquid and current assets (as defined in section III, paragraph 4(d)) in excess of current liabilities in sufficient amount to meet his $250,000 commitment.

(f) Whether the applicant will have available sufficient revenues to supplement available funds.

(g) Assuming that sufficient revenues are not available to supplement the applicant's funds, whether the applicant has available other sources of funds sufficient to meet its cash requirements.

(h) Whether in the light of the evidence adduced pursuant to the foregoing, P. H., Inc., is financially qualified.

2. To determine which of the proposals would better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

It is further ordered, That, in the event of a grant of the application of Rust Craft Broadcasting Co. or the application of Roy H. Park Broadcasting, Inc., either applicants' request, pursuant to § 73.613(b) of the Commission's rules to locate its main studios outside the corporate limits of Utica, N.Y., shall be granted.

It is further ordered, That, in the event of a grant of the application of Rust Craft Broadcasting Co., the grant shall be without prejudice to whatever action the Commission may deem appropriate as a result of the pending proceeding in Docket No. 17371.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: December 20, 1967.

Released: January 2, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–312; Filed, Jan. 8, 1968; 8:52 a.m.]

[1] Harriscope, Inc., FCC 65–1165, 2 FCC 2d 223.

[Docket Nos. 17680–17682; FCC 68M–4]

STATE OF OREGON BOARD OF HIGHER EDUCATION ET AL.

Memorandum Opinion and Order Scheduling Further Prehearing Conference

In re applications of: State of Oregon acting by and through the State Board of Higher Education, Medford, Oreg., Docket No. 17680, File No. BPCT–3814; Liberty Television, a joint venture comprised of Liberty Television, Inc., and Siskiyou Broadcasters, Inc., Medford, Oreg., Docket No. 17681, File No. BPCT–3858; Medford Printing Co., Medford, Oreg., Docket No. 17682, File No. BPCT–3859; for construction permit for new television broadcast station (Channel 8).

1. The Hearing Examiner has for consideration a Petition for Reconsideration, filed on December 12, 1967, by Liberty Television, together with pleadings properly filed in response thereto.

2. On November 20, 1967, Medford Printing Co. filed a petition for leave to amend its application. By order of December 5, 1967, the Examiner granted the amendment, asserting in his order that no reply pleadings had been filed within the time provided by rule. In this assertion the Examiner erred for there was outstanding at that time the Commission's "Moratorium on Filing of Pleadings in Cases Designated for Hearing" (FCC 67–1226) which had the effect of extending the time for reply pleadings in this instance by 14 days. Thus, Liberty was deprived of its right to reply to the Medford Printing petition, and it is appropriate that the ruling on that petition be reconsidered in the light of Liberty's comments in its subject pleading.

3. In its petition of November 20, 1967, Medford Printing stated that a recheck of the engineering portion of its application has disclosed an error as to its site elevation and the calculations based thereon. It is this error which the proposed amendment would correct. That is to say, Medford Printing does not seek any actual modification of its proposal, it seeks only to correct a mistake in the way that proposal is described.

4. Liberty now opposes the requested amendment on the grounds that: (1) If allowed, it will tend to minimize a problem which is the subject of a pending request by Liberty for enlargement of the issues; and (2) the data supporting the requested corrections are insufficient to establish that the corrected site information is more accurate than the original.

5. As noted in the Examiner's order of December 5, 1967, the proposed amendment is corrective in nature. It would change nothing, but merely state the facts as Medford Printing now represents them to be. An applicant's opponents have no vested rights in its errors, and the public interest is not well served by requiring a hearing to be conducted on the basis of facts believed to be false.

6. As to the dependability of the information contained in the proposed amendment, there is no reason to believe that it is either more or less dependable than similar assertions in other applications before the Commission. Applicants are required to furnish certain technical information, and the Commission proceeds on the assumption that such information is accurate. If the applicant comes to believe that the information it furnished is wrong it has a duty to appropriately amend, and this Medford Printing has done. If Liberty believes that the amended representations are in error there are procedures available by which it can seek to have inquiry initiated.

7. Finally, it should be noted that recent actions of the Review Board have placed this proceeding in a posture where it would be realistic to establish procedural dates. It is appropriate that a conference be convened for that purpose.

Accordingly, it is ordered, That the subject Petition for Reconsideration, is denied; and

It is further ordered, That a further prehearing conference herein shall convene on January 30, 1968, at 9 a.m., in the offices of the Commission at Washington, D.C.

Issued: January 2, 1968.

Released: January 3, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–313; Filed, Jan. 8, 1968; 8:52 a.m.]

FEDERAL RESERVE SYSTEM

CITIZENS BANKING CO.

Order Denying Merger of Banks

In the matter of the application of The Citizens Banking Co. for approval of merger with The Firelands Community Bank.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by The Citizens Banking Co., Sandusky, Ohio, a State member bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank and The Firelands Community Bank, Huron, Ohio, under the charter of the former and the title of The Citizens Firelands Bank. As an incident to the merger, the two offices of The Firelands Community Bank would become branches of the resulting bank. Notice of the proposed merger, in form approved by the Board, has been published pursuant to said Act.

Upon consideration of all relevant material in the light of the factors set forth in said Act, including reports furnished by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Attorney General, on the competitive factors involved in the proposed merger.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is denied.

Dated at Washington, D.C., this 2d day of January 1968.

By order of the Board of Governors.[2]

[SEAL] ROBERT P. FORRESTAL,
Assistant Secretary.

[F.R. Doc. 68–278; Filed, Jan. 8, 1968; 8:48 a.m.]

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or the Federal Reserve Bank of Cleveland.

FEDERAL POWER COMMISSION

[Docket Nos. RI68–332, etc.]

UNION OIL COMPANY OF CALIFORNIA ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates[3]

DECEMBER 29, 1967.

The respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 15, 1968.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

[2] Voting for this action: Chairman Martin, and Governors Robertson, Mitchell, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Daane.

[3] Does not consolidate for hearing or dispose of the several matters herein.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI68-332	Union Oil Co. of California, Los Angeles, Calif. 90017, Attn: C. E. Smith, Mgr. Gas & Gas Liquids Dept.	178	3	El Paso Natural Gas Co. (Brown Bassett Field, Crockett County, Tex.) (R.R. District No. 7c) (Permian Basin Area).	$28,620	[2] 11-29-67	[3] 2-1-68	7-1-68	[4] [5] 9.55	[4] [6] 17.5	
		154	[7] 5	El Paso Natural Gas Co. (Red Hills Area, Lea County, N. Mex.) (Permian Basin Area).	21,330	[2] 11-24-67	[3] 2-1-68	7-1-68	[4] [5] 17.69	[4] [8] 18.48	
		169	6	El Paso Natural Gas Co. (Gomez Field, Pecos County, Tex.) (R.R. Dist. No. 8) (Permian Basin Area).	284,741	[2] 11-24-67	[3] 2-1-68	7-1-68	[4] [9] 15.77	[4] [10] 16.72295	
		177	2	do	5,804	[2] 11-24-67	[3] 2-1-68	7-1-68	[4] [5] 15.91	[4] [10] 17.50	
RI68-333	Forest Oil Corp., 1300 National Bank of Commerce Bldg., San Antonio, Tex. 78205.	39	3	Transwestern Pipeline Co. (West Rojo Caballo Field, Pecos and Reeves Counties, Tex.) (R.R. Dist. No. 8) (Permian Basin Area).	56,356	[2] 11-15-67	[3] 2-1-68	7-1-68	[4] [11] 15.84	[4] [10] [12] 16.805	

[2] As set forth in the body of this order, the effective filing date is Jan. 1, 1968.
[3] The stated effective date is 30 days after expiration of the statutory notice requirement which commenced on Jan. 1, 1968, for these filings.
[4] Pressure base is 14.65 p.s.i.a.
[5] Conditioned initial rate under temporary certificates in Docket No. CI65-485 (R.S. No. 154), Docket No. CI67-1366 (R.S. No. 177) and Docket No. CI68-106 (R.S. No. 178).
[6] Base rate of 17.5 cents per Mcf subject to downward adjustment for B.t.u. content below 975 B.t.u.'s per cubic foot.
[7] Pertains only to acreage added by Supplement No. 2 to R.S. No. 154.
[8] The B.t.u. price adjustment reflected in this amount is not considered to be compatible with standards set in Opinion No. 468.
[9] Conditioned initial rate established in Opinion No. 484 granting certificate in Docket No. CI64-1085.
[10] Periodic rate increase.
[11] Initial rate.
[12] Contract rate of 17.5 cents per Mcf less 0.595-cent contract deduction for B.t.u. content less than 1,000 B.t.u.'s, and effective deduction by purchaser for removal of sulfur content.

The increased rate proposals filed by Respondents relate to sales in the Permian Basin Area which are subject to a filing moratorium provision contained in their respective certificate authorizations proscribing filings prior to January 1, 1968. In view of the filing moratorium, we shall treat these rate filings as though filed on January 1, 1968, and shall suspend the proposed rates for 5 months from February 1, 1968, the expiration date of the 30-day statutory notice period from January 1, 1968.

The increased rates proposed herein are in excess of the applicable just and reasonable area rates for these sales of natural gas in the Permian Basin Area as determined in Opinion No. 468, as amended.

[F.R. Doc. 68-196; Filed, Jan. 8, 1968; 8:45 a.m.]

[Docket No. RI68-334]

UNION PACIFIC RAILROAD CO.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates

DECEMBER 29, 1967.

On December 1, 1967, Union Pacific Railroad Co. (Union)[1] tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI68-334	Union Pacific Railroad Co., 5480 Ferguson Dr., Los Angeles, Calif. 90022.	9	1	Colorado Interstate Gas Co. (Point of Rocks Field, Sweetwater County, Wyo.).	$730	12-1-67	[2] 1-1-68	6-1-68	15.0	[3] [4] 16.0	
	do	11	1	Colorado Interstate Gas Co. (Table Rock Field (Deep Zones), Sweetwater County, Wyo.).	7,300	12-1-67	[2] 1-1-68	6-1-68	15.0	[3] [4] 17.0	

[2] The stated effective date is the contractually provided effective date.
[3] Periodic rate increase.
[4] Pressure base is 14.65 p.s.i.a.

Union's proposed increase rates and charges exceed the area increased rate ceiling of 12.7 cents Mcf for Wyoming as announced in the Commission's statement of general policy No. 61-1, as amended (18 CFR Ch. I, Part 2, §2.56).

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed changes, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in the above-designated supplements.

(B) Pending such hearing and decision thereon, Union's aforementioned rate supplements are hereby suspended and the use thereof deferred until June 1, 1968, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

[1] Address is: 5480 Ferguson Drive, Los Angeles, Calif. 90022.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 15, 1968.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Acting Secretary.*

[F.R. Doc. 68-197; Filed, Jan. 8, 1968; 8:45 a.m.]

[Docket No. RI68-227]

CAROLINE HUNT TRUST ESTATE

Order Providing for Hearing on and Suspension of Proposed Change in Rate; Correction

DECEMBER 6, 1967.

In Order Providing for Hearing on and Suspension of Proposed Change in Rate, issued November 17, 1967, and published in the FEDERAL REGISTER November 28, 1967 (F.R. Doc. 67-13840), 32 F.R. 16236, Docket No. RI68-227, last line of paragraph (D): Change "January 3, 1967" to read "January 3, 1968".

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 68-239; Filed, Jan. 8, 1968; 8:46 a.m.]

[Docket No. G-6083 etc.]

PUBCO PETROLEUM CORP. ET AL.

Findings and Order; Correction

DECEMBER 21, 1967.

Pubco Petroleum Corp. and other Applicants listed herein, Docket Nos. G-6083 et al.; David Crow (Operator) et al., Docket No. CI68-251.

In findings and order after statutory hearing issuing certificates of public convenience and necessity, amending certificates, permitting and approving abandonment of serivce, terminating certificates, severing proceeding, terminating rate proceeding, redesignating proceeding, and accepting related rate schedules and supplements for filing, issued November 15, 1967, and published in the FEDERAL REGISTER November 28, 1967 (F.R. Doc. 67-13758), 32 F.R. 16235, Docket Nos. G-6083 et al., on 5th column: Change FPC Gas Rate Schedule "No. 13" to read FPC Gas Rate Schedule "No. 14" relating to Docket No. CI68-251.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 68-240; Filed, Jan. 8, 1968; 8:51 a.m.]

[Docket Nos. RI68-328 etc.]

ASHLAND OIL & REFINING CO. ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

DECEMBER 28, 1967.

The Respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

[1] Does not consolidate for hearing or dispose of the several matters herein.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR, Ch. I) and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplements to the rate schedules filed by Respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 15, 1968.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[1] APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI68-328	Ashland Oil & Refining Co., Post Office Box 18695, Oklahoma City, Okla. 73118.	185	1	Natural Gas Pipeline of America (Erick Field, Beckam County, Okla.) (Oklahoma "Other" Area).	$23	12-6-67	[2] 1-6-68	[3] 1-7-68	[6] 15.60	[4 5 6 7] 15.615	
RI68-329	Mobil Oil Corp., Post Office Box 2444, Houston, Tex. 77001.	[9] 356	1	El Paso Natural Gas Co. (East Panhandle Field, Wheeler County, Tex.) (R.R. District No. 10).	29	12-4-67	[8] 1-4-68	[3] 1-5-68	13.0	[5 10] 14.0	

[2] The stated effective date is the effective date requested by Respondent.
[3] The suspension period is limited to 1 day.
[4] Tax reimbursement increase.
[5] Pressure base is 14.65 p.s.i.a.
[6] Includes base rate of 15 cents plus upward B.t.u. adjustment. Base Rate subject to upward and downward B.t.u. adjustment.
[7] Includes 0.015-cent tax reimbursement.
[8] The stated effective date is the first day after expiration of the statutory notice.
[9] Basic contract dated after Sept. 28, 1960, the date of issuance of general policy statement No. 61-1, as amended.
[10] Periodic rate increase.

Mobil Oil Corp. (Mobil) requests an effective date of January 1, 1968, for its proposed rate increase. Good cause has not been shown for waiving the 30-day statutory notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Mobil's rate filing and such request is denied.

Ashland Oil & Refining Co.'s (Ashland) proposed rate increase reflects tax reimbursement for the recently enacted increase in Oklahoma Excise Tax from 0.02 cent to 0.04 cent per Mcf which became effective on July 1, 1967. The proposed rate exceeds the applicable 11-cent-per-Mcf area increased rate ceiling for the Oklahoma "Other" Area as announced in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56). Since the proposed increase relates to tax reimbursement resulting from the increase in Oklahoma Excise Tax, it is appropriate to suspend Ashland's rate filing for 1 day.

The contract related to the rate filing of Mobil was executed subsequent to September 28, 1960, the date of issuance of the Commission's statement of general policy No. 61–1, as amended, and the proposed increased rate of 14 cents per Mcf exceeds the area increased rate ceiling of 11 cents per Mcf for Railroad District No. 10, but does not exceed the initial service ceiling of 17 cents established for the area involved. We believe, in this situation, Mobil's proposed rate filing should be suspended for 1 day from January 4, 1968, the expiration date of the statutory notice.

[F.R. Doc. 68–241; Filed, Jan. 8, 1968; 8:46 a.m.]

[Docket No. RI68–303]

ATLANTIC RICHFIELD CO.

Order Permitting Rate Filing, Providing for Hearing on and Suspension of Proposed Change in Rate

DECEMBER 28, 1967.

On November 27, 1967, Atlantic Richfield Co. (Atlantic)[1] tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change is contained in the following designated filing:

Description: Notice of change, dated November 24, 1967.

Purchaser and producing area: West Texas Gathering Co. (Kermit and South Kermit Fields, Winkler County, Tex.) (RR. District No. 8), (Permian Basin Area).

Rate schedule designation: Supplement No. 4 to Atlantic's FPC Gas Rate Schedule No. 262.

Effective date: January 1, 1968.[2]
Amount of annual increase: $5,113.
Effective rate: 16 cents per Mcf.[3]
Proposed rate: 18 cents per Mcf.[4]
Pressure base: 14.65 p.s.i.a.

Atlantic proposes a two-step periodic rate increase from 16 cents to 18 cents per Mcf, amounting to $5,113 annually, for a sale of gas to West Texas Gathering Co. in the Permian Basin Area of Texas. The proposed rate exceeds the applicable area ceiling rate of 16.39 cents (base rate of 16.5 cents less 0.11-cent-per-Mcf treating cost) established by Atlantic's related quality statement accepted pursuant to Opinion No. 468, as amended.

Atlantic is presently selling the gas under temporary certificates issued July 6, 1962, for acreage covered by the basic contract, and September 3, 1964, for acreage added by Supplement No. 2 to the rate schedule, in Docket No. CI62–1287. The conditioned temporary certificates provided for an initial rate of 16 cents per Mcf subject to refund for any amounts collected, plus interest, in excess of the rate determined to be required by the public convenience and necessity in Docket No. CI62–1287. The temporary covering the additional acreage, issued September 3, 1964, stated that refunds shall not be required below a floor of 14.5 cents per Mcf. The conditioned rate in both cases was imposed because the gas was of nonpipeline quality and the cost of treating the gas was incurred by the buyer.

The above-mentioned temporary certificates also contain Condition (2) which states that the conditioned rate shall remain in effect until changed by Commission order in the related certificate proceeding. In similar cases the Commission has waived Condition (2) for other producers after expiration of a 3-year period between date of initial delivery and request for a rate increase. In the instant case, Atlantic's deliveries were initiated more than three years ago under both the basic contract and the added acreage. In this situation, we believe that it would be in the public interest that Condition (2) in Atlantic's temporary certificate in Docket No. CI62–1287 be waived to permit Atlantic's proposed notice of change in rate to be filed since the sale in question is in the Permian Basin Area wherein an applicable ceiling of 16.39 cents per Mcf for this sale has been established.

Since the proposed rate of 18 cents per Mcf exceeds the applicable area ceiling rate established by Atlantic's related quality statement, we believe it should be suspended for 5 months from January 1, 1968, the proposed effective date.

Except for the stay of the moratorium in Opinion No. 468, Atlantic's proposed rate increase would be rejectable because it is in excess of the applicable area ceiling determined in Opinion No. 468. If the moratorium is ultimately upheld upon judicial review, Atlantic's rate increase will be rejected ab initio.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause exists for waiving Condition (2) in the temporary certificate issued in Docket No. CI62–1287 with respect to Atlantic's notice of change in rate, and for allowing such notice of change to be filed.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a public hearing concerning the lawfulness of the proposed change, and that Supplement No. 4 to Atlantic's FPC Gas Rate Schedule No. 262 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Condition (2) in the temporary certificate issued in Docket No. CI62–1287 is hereby waived with respect to Atlantic's notice of change in rate, and such rate change is permitted to be filed.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 4 to Atlantic's FPC Gas Rate Schedule No. 262.

(C) Pending such hearing and decision thereon, Supplement No. 4 to Atlantic's FPC Gas Rate Schedule No. 262 is hereby suspended and the use thereof deferred until June 1, 1968, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 15, 1968.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 68–242; Filed, Jan. 8, 1968; 8:46 a.m.]

WILLIAM HARVEY DENMAN ET AL.

Notice of Continuance

JANUARY 3, 1968.

William Harvey Denman, Trustee, et al. v. J. M. Huber Corp., Docket No. RI67–113; Mobil Oil Corp. v. Carl F. Matzen, et al., Docket No. RI67–114; Western Natural Gas Co. v. Elmer Hennigh, et al., Docket No. RI67–310; Pan American Petroleum Corp. v. Leland C. Waechter, et al., Docket No. RI67–400.

The defendants in Docket Nos. RI67–114, RI67–310, and RI67–400 on December 21, 1967, filed a motion for a continuance of the hearing in the above-designated proceedings, heretofore set to commence on January 8, 1968, to a date not earlier than January 22, 1968.

Notice is hereby given that the hearing in the above-designated proceedings shall commence on January 22, 1968, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 68–267; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. CP68–186]

EL PASO NATURAL GAS CO.

Notice of Application

JANUARY 3, 1968.

Take notice that on December 29, 1967, El Paso Natural Gas Co. (Applicant), Post Office Box 1492, El Paso, Tex. 79999,

[1] Address is: Post Office Box 2819, Dallas, Tex. 75221, Attention: Robert E. Wade, Esquire.

[2] The stated effective date is the effective date requested by Respondent.

[3] Initial rate under conditioned temporary certificates issued July 6, 1962 (for acreage covered under basic contract) and Sept. 3, 1964 (for acreage added by Supplement No. 2) in Docket No. CI62–1287.

[4] Two-step periodic increase.

filed in Docket No. CP68–186 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delivery of natural gas on an exchange basis to Pacific Gas Transmission Co. (PGT) for transmission and delivery to Pacific Gas and Electric Co. (PG&E) for a limited term, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into an Emergency Exchange Agreement with PG&E and PGT whereby PG&E will direct PGT to deliver to Applicant near Stanfield, Oreg., up to 75,000 Mcf per day commencing upon receipt of necessary authorizations and continuing no later than April 30, 1968. Applicant, commencing no later than May 1, 1968, and continuing no later than November 30, 1968, will deliver to PGT at Stanfield, Oreg., for transmission and redelivery to PG&E at the California-Oregon border, gas at the rate of 25,000 Mcf per day, or such other rates as may be agreed upon, until the total quantity of gas so delivered to PGT shall equal 150 percent of the quantity of gas received by Applicant.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before January 22, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68–268; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. CP67–181, etc.]

EAST TENNESSEE NATURAL GAS CO.

Notice of Petition To Amend

JANUARY 3, 1968.

Take notice that on December 18, 1967, East Tennessee Natural Gas Co. (Petitioner), Post Office Box 10245, Knoxville, Tenn. 37919, filed in Docket No. CP67–181, et al., a petition to amend the order issued August 2, 1967, in said docket by requesting authorization to increase the volumetric limitation in service to Volunteer Natural Gas Co. (Volunteer), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the aforementioned order issued August 2, 1967, Petitioner was authorized to increase its sales to Volunteer for its Greenville Service Area from 2,716 Mcf per day to 3,035 Mcf per day at 14.73 p.s.i.a. By letter dated December 5, 1967, Volunteer has advised Petitioner that additional natural gas for firm service during the 1967–68 winter heating season is needed for the Greenville Service Area.

Accordingly, Petitioner requests that the order of August 2, 1967, be amended by authorizing the increase in the volumetric limitation in the service to Volunteer from 3,035 Mcf per day to 3,540 Mcf per day at 14.73 p.s.i.a. for the 1967–68 winter heating season.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§157.10) on or before January 29, 1968.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68–269; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. CP67–221 (Phase II)]

EAST TENNESSEE NATURAL GAS CO.

Notice of Amendment to Application

JANUARY 3, 1968.

Take notice that on December 18, 1967, East Tennessee Natural Gas Co. (Applicant), Post Office Box 10245, Knoxville, Tenn. 37919, filed in Docket No. CP67–221 an amendment to the aplication filed in said docket on February 6, 1967, pursuant to section 7(b) and section 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to serve the additional peak-day requirements of its existing customers for the 1968–69 and 1969–70 winter heating seasons, all as more fully set forth in the amendment to the application which is on file with the Commission and open to public inspection.

By agreement of the parties and pursuant to the "Presiding Examiner's Report and Order on Prehearing Conference" issued June 23, 1967, the application in this proceeding was divided into two phases. Phase I, relating to service and facilities for the 1967–68 winter, was disposed of by an order issued August 2, 1967, which granted the authorization requested and which ordered Applicant to file an amendment to its application to cover Phase II.

By the instant amendment to the application, Applicant states that it seeks authorization in Phase II of this proceeding to serve the additional peak-day requirements of its existing customers for the 1968–69 and 1969–70 winter heating seasons.

Specifically, Applicant seeks in the amendment to the application permission and approval to abandon approximately 12 miles of 16-inch O.D. spiral weld pipe on its North Line near the West Bank of the Tennessee River and to replace said pipe with an equal length of 24-inch O.D. spiral weld pipe. Applicant also proposes to construct and operate two new compressor stations, Nos. 3110 and 3302, located at Wartburg, Tenn., and Boyds Creek, Tenn., respectively. The Wartburg Station will have two 1,000 horsepower units and the Boyds Creek Station will have one 1,000 horsepower unit.

Applicant states that the proposed facilities will provide it with a peak-day capacity of 284,420 Mcf of natural gas per day.

The total estimated cost of the proposed facilities is $3,556,877, which cost will be financed by the issuance of common stock, first mortgage pipeline bonds and from general funds of the company.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before January 29, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission-and-approval for the proposed abandonment are required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68–270; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. E–7391]

GULF STATES UTILITIES CO.

Notice of Application

JANUARY 3, 1968.

Take notice that on December 21, 1967, Gulf States Utilities Co. (Applicant) filed an application seeking authority pursuant to section 204 of the Federal

Power Act to issue $25 million principal amount of first mortgage bonds and 1,400,000 additional shares of common stock.

Applicant is incorporated under the laws of the State of Texas with its principal business office at Beaumont, Tex., and is engaged in the electric utility business in southeastern Texas and south-central Louisiana.

The bonds and the common stock are to be sold at competitive bidding pursuant to the Commission's regulations. The Applicant proposes to invite bids on or about February 1, 1968 for the purchase of the bonds and the common stock.

The proceeds from the sale of the new securities will be used in part to reimburse the treasury of the Applicant for expenditures heretofore made for additions, improvements, and retirements to the Applicant's facilities during the period January 1, 1959, through October 31, 1967. The proceeds will also be used in part to pay in full all of the Applicant's short-term notes with commercial banks and unsecured promissory notes in the form of commercial paper, previously authorized by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 23, 1968, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-271; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. E-7380]

INTERSTATE POWER CO. AND IOWA PUBLIC SERVICE CO.

Notice of Application

JANUARY 3, 1968.

Take notice that on December 4, 1967, as supplemented on December 13, 1967, Interstate Power Co. (Interstate) and Iowa Public Service Co. (Iowa) filed a joint application seeking authority pursuant to section 203 of the Federal Power Act for Interstate to sell and Iowa to buy a segment of a 161-kv. transmission line.

Interstate is incorporated under the laws of the State of Delaware with its principal business office at Dubuque, Iowa, and is engaged in the electric utility business in the States of Illinois, Iowa, Minnesota, and South Dakota.

Iowa is incorporated under the laws of the State of Iowa with its principal business office at Sioux City, Iowa and is engaged in the electric utility business in the States of Iowa, Nebraska, and South Dakota.

The segment of the transmission line to be sold by Interstate to Iowa is approximately 11.3 miles in length emanating from Iowa's Black Hawk Substation in Black Hawk County, Iowa. After this purchase is consummated, Iowa Public Service Co. proposes to use said segment of 161-kv. electric transmission line as part of its electric transmission system, and particularly for a tap to the 345-kv. transmission line that runs from Minneapolis, Minn., to St. Louis, Mo. According to the application Iowa will pay Interstate $210,689.07 for the sale and transfer of the line.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 25, 1968, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-272; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. RI68-270 etc.]

MANCO CORP. ET AL.

Order Permitting Rate Filings, Accepting Contract Amendment, Providing for Hearings on and Suspension of Proposed Changes in Rates; Correction

DECEMBER 28, 1967.

Manco Corp. (Operator), et al., Docket Nos. RI68-270 et al.; Samedan Oil Corp. et al., Docket No. RI68-274.

In order permitting rate filings, accepting contract amendment, providing for hearings on and suspension of proposed changes in rates, issued December 15, 1967, and published in the FEDERAL REGISTER December 22, 1967 (F.R. Doc. 67-14843), 32 F.R. 20755, Docket Nos. RI68-270 et al., in ordering paragraph (B), third line: Following CI62-1503, insert "is hereby waived".

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-273; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket Nos. RP68-5—RP68-10]

MANUFACTURERS LIGHT AND HEAT CO., ET AL.

Notice of Extension of Time for Filing Testimony and Exhibits

JANUARY 3, 1968.

The Manufacturers Light and Heat Co., Docket No. RP68-5; United Fuel Gas Co., Docket No. RP68-6; Atlantic Seaboard Corp., Docket No. RP68-7; Kentucky Gas Transmission Corp., Docket No. RP68-8; The Ohio Fuel Gas Co., Docket No. RP68-9; Home Gas Co., Docket No. RP68-10.

On December 27, 1967, Respondents filed a motion for an extension of time within which to file testimony and exhibits in the above-designated proceedings. In a letter filed January 2, 1968, counsel for Respondents states that interveners have no objection to Respondents' motion;

Notice is hereby given that the time is extended to January 29, 1968, within which Respondents shall file testimony and exhibits; that the time is extended to and including February 19, 1968, within which other parties and the Commission Staff shall file testimony and exhibits; and that the prehearing conference heretofore scheduled for February 13, 1968, is postponed to March 5, 1968, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G. Street NW., Washington, D.C. 20426.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-274; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. CP68-33]

MID STATES GAS CO.

Notice of Postponement of Hearing

JANUARY 3, 1968.

Mid States Gas Co., Inc., Applicant, Docket No. CP68-33; Panhandle Eastern Pipe Line Co., Respondent.

The hearing in the above-designated matter, set to commence on January 4, 1968, is postponed indefinitely.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-275; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. CP62-59]

PACIFIC GAS TRANSMISSION CO.

Notice of Petition To Amend

JANUARY 3, 1968.

Take notice that on January 2, 1968, Pacific Gas Transmission Co. (Petitioner), 245 Market Street, San Francisco, Calif. 94106, filed in Docket No. CP62-59 a petition to amend the order issued in said docket on April 6, 1962, as amended, by authorizing the construction and operation of certain taps and metering facilities to enable it to transport volumes of natural gas for the account of El Paso Natural Gas Co. (El Paso), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the order issued April 6, 1962, Petitioner was authorized to construct and operate taps and metering facilities in Idaho, Washington, and Oregon, in order to deliver to El Paso part of the gas Petitioner was authorized to transport for El Paso in Docket No. G-17350 et al. Petitioner's construction and operation of the facilities was contingent upon El Paso's receiving the requisite authorization to sell the gas received from Applicant's facilities. The authorization was limited to a 3-year period, which was extended for a 3-year period by an amending order issued in Docket No. CP62-59 on January 28, 1965.

By the instant petition, Petitioner seeks another extension for a 3-year period in which to make the deliveries of natural gas to El Paso and to construct and operate the necessary facilities for such deliveries. The estimated cost of any one tap and metering facility on Petitioner's line is $25,000, which cost will be borne by El Paso.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before January 22, 1968.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 68-276; Filed, Jan. 8, 1968; 8:48 a.m.]

[Docket No. 6-513 etc.]

SOUTHERN UNION GAS CO. ET AL.

Order Granting Intervention, Reopening Record and Consolidating Proceedings, and Denying Petition To Omit Intermediate Decision

JANUARY 3, 1968.

Southern Union Gas Co., Docket Nos. G-513 and CP68-70; Del Norte Natural Gas Co., Docket Nos. CP66-104 and CP66-106; El Paso Natural Gas Co. and El Paso Gas Transportation Corp., Docket No. CP66-105; Juarez Gas Transportation Co., Inc., Docket Nos. CP68-130, CP68-131 and CP68-132.

In these proceedings involving an application by Del Norte Natural Gas Co. to export natural gas from the United States to serve consumers in Juarez, Mexico, a new and competing application to export gas has been filed by Juarez Gas Transportation Co., Inc. (Juarez Transportation), which has asked to intervene in the prior dockets, to reopen the record, and to consolidate the proceedings. Del Norte has asked for waiver of the intermediate decision procedure.

Del Norte originally filed its application in Docket No. CP66-104 on October 12, 1965, under section 3 of the Natural Gas Act to export and sell gas to Juarez Gas Co., S. A. (Juarez Gas), at that time the sole distributor serving the city of Juarez, and to a new competing distributor, Gas Natural de Juarez, S.A. (Gas Natural). Del Norte also filed in Docket No. CP66-106 an application pursuant to Executive Order No. 10485 for a permit authorizing the operation and maintenance of facilities at the international boundary, while Southern Union Gas Co., the previous supplier to Juarez, requested in Docket No. G-513 revocation of its Presidential permit and authorization to export Gas. El Paso Natural Gas Co. (El Paso) and El Paso Gas Transportation Corp. (El Paso Transportation) in Docket No. CP66-105 applied for certificates to sell and deliver gas to Del Norte for resale and exportation.

Our orders, 34 FPC 1584, 1588, granting the above applications were remanded in Juarez Gas Company v. F.P.C., 375 F. 2d 595 (CADC 1967) because of our denial of intervention by Juarez Gas. However, service to the Mexican companies has already begun and on July 7, 1967, the Presiding Examiner, Harry C. Shriver, issued an interim decision in accordance with the order of the court determining the amount of gas to be delivered by Del Norte to Gas Natural pending completion of the proceedings. This decision became final by notice issued on August 18, 1967. Meanwhile, Juarez Gas applied for a show cause order because of failure of Del Norte and Southern Union to file certain applications and because of the alleged insufficiency of their evidence. On August 7, 1967, though denying the show cause order, we found that Del Norte and Southern Union should file further evidence and that, depending upon the record, Del Norte might need a certificate under section 7(c) to operate facilities leased to it by Southern Union, which, in turn, might need authority to abandon the facilities under section 7(b). In that order we also required Southern Union to apply for a permit for the construction of facilities at the international border. On September 6, 1967, supplemented on September 13, 1967, Southern Union filed such an application in Docket No. CP68-70 in purported compliance with our order. Upon further motion by Juarez Gas for a show cause order on the ground that the filings made by Del Norte and Southern Union were incomplete, we denied the motion on the ground that the question of the completeness of the evidence was one for the Examiner in the first instance. The hearings in these proceedings were completed on September 15, 1967, when the Examiner prescribed a briefing schedule.

On October 13, 1967, Juarez Transportation, which is a Texas corporation and a subsidiary of Juarez Gas, filed a series of competing applications. In Docket No. CP68-130 Juarez Transportation proposes to construct and operate a pipeline extending 550 feet from a point on El Paso Transportation's line in El Paso, Tex., to a point on the international boundary between the United States and Mexico where it proposes to deliver and sell gas to Juarez Gas for resale in the city of Juarez, thus supplanting the service to Juarez Gas now being rendered by Del Norte. In Docket No. CP68-131 Juarez Transportation applies for authority under section 3 to export natural gas and in Docket No. CP68-132 applies for a Presidential permit authorizing the construction, operation, maintenance, and connection of facilities at the border of the United States. Del Norte and Southern Union have asked leave to intervene in these proceedings.

On October 18, 1967, Juarez Transportation moved to consolidate its three applications with the earlier docket numbers alleging that its proposal is mutually exclusive and competitive. A corresponding motion to consolidate was also filed by Juarez Gas on October 23, 1967. Motions in opposition were filed by Del Norte, Southern Union and by El Paso and El Paso Transportation. An answer was filed by Juarez Gas and Juarez Transportation and reply was made by Southern Union. Juarez Gas has asked to intervene in Docket No. CP68-70 and Juarez Transportation has asked to intervene in this docket and prior dockets.

On December 12, 1967, Del Norte petitioned the Commission to waive the intermediate decision procedure alleging the need for gas in the city of Juarez and the damage to Gas Natural because of the volume limitations established by the Examiner under the court's direction. Del Norte suggests that Juarez Transportation could be afforded a later separate hearing because Juarez Gas could cancel its contract with Del Norte upon 60 days' notice. An answer to Del Norte's petition was filed by Juarez Gas and Juarez Transportation.

These pleadings raise several issues, the first of which is whether Juarez Transportation is entitled to have its alleged competitive applications heard with the proposals of Del Norte and Southern Union. The opponents argue that the applications are untimely. They were filed approximately 1 month after the hearings on Docket Nos. G-513 and CP66-104, 105, and 106 were closed, and our regulations under the Natural Gas Act § 157.11 (a), provide that when a competitive application "is filed less than 15 days prior to the commencement of a hearing" "the Commission will not schedule the new application for hearing until it has rendered its final decision on such pending application, except when, it finds that the public interest requires otherwise." However, Southern Union's application in Docket No. CP68-70 was not filed until September 6, 1967. This application, as required by our order of August 7, 1967, is a necessary application for effecting the proposal of Del Norte and Southern Union as explained in that order. While the general subject matter of the CP68-70 application (as well as of the possibly necessary, but as yet unfiled, applications by Del Norte and Southern Union under sections 7(c) and 7(b), respectively) has been involved in the hearing already held in G-153, CP68-70 was not even given the requisite public notice until September 14, 1967, and has not been consolidated with the other dockets in these proceedings, and interested parties have not been afforded a hearing on it. Thus, the Juarez Transportation applications filed October 13, 1967, to the extent they are mutually exclusive with CP68-70, are not untimely within the meaning of our Regulations.

Apart from these considerations it is our opinion that the Juarez Transportation proposal should be considered with the proposals of Southern Union and Del Norte. The new proposal would have the possible advantage of providing Juarez Gas with a connection through the facilities of its own subsidiary with El Paso's pipeline. The pleadings also indicate that by this means the cost to Juarez Gas might be reduced by as much as 14 cents per Mcf under the price proposed for gas purchased from Del Norte.

The opponents of the Juarez Transportation applications object to the delay that will be caused by consolidation and reopening. Southern Union also sees a

substantial detriment to potential new customers of Gas Natural in the city of Juarez unless the volume restrictions of the Examiner's decision are lifted. However, assuming that potential additional customers of either of the Mexican distributors may have to wait service until the completion of the consolidated case and that a final decision therein will take somewhat longer than if we were to attempt to decide the two interrelated proposals seriatim, we think that this possibility is less significant than the opportunity provided by the new applications to consider the optimum method of providing service to all of the Mexican gas consumers. Furthermore, we do not think full equity would be afforded by granting a hearing to Juarez Transportation only after the issuance of the certificates in the prior applications because the delay would work to the disadvantage of Juarez Gas and Juarez Transportation.

The El Paso companies point out that the Juarez Transportation applications are unsupported by any gas supply, and that there is no application by El Paso to make sales to Juarez Gas. However, if we should come to the conclusion that the Juarez Transportation proposal is otherwise in the public interest, we could condition any certificates issued to El Paso and El Paso Transportation under CP66–105 so as to require an appropriate portion of the gas involved in those dockets be sold to Juarez Transportation. We, of course, do not pass upon the merits of any such action here, and El Paso will have full opportunity in the reopened hearing to submit such evidence thereon as they wish. We should not reject, however, for lack of a gas supply the possibly advantageous proposal make by Juarez Transportation any more than we did that of Northern Natural in the Great Lakes case where the Northern Natural proposal was dependent on the receipt of gas from Trans-Canada, which was affiliated with Great Lakes.[1]

Concluding as we do that the Juarez Gas and Juarez Transportation proposal should be heard in the same proceedings with the proposals of Southern Union and Del Norte, we shall grant the motions to consolidate and reopen, and the petitions to intervene by the Juarez companies as well as those by Southern Union and Del Norte in the new applications. In view of this decision Del Norte's petition for waiver of the intermediate decision is premature.

The Commission orders:

(A) The proceedings in Docket No. CP68–70 and in CP68–130, CP68–131, and CP68–132 are hereby consolidated with those in Docket Nos. G–513, CP66–104, CP66–106, and CP66–105, and the record is reopened with a direction to the Presiding Examiner to set a hearing at a time to be determined by him.

(B) The petitions to intervene by Juarez Gas in Docket No. CP68–70, by Juarez Transportation in such docket and the prior dockets listed in (A) above, and by Del Norte and Southern Union in Docket Nos. CP68–130, CP68–131, and CP68–132 are granted.

(C) The petition of Del Norte for omission of the intermediate decision in part is denied.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Acting Secretary.*

[F.R. Doc. 68–277; Filed, Jan. 8, 1968; 8:48 a.m.]

[1] Great Lakes Gas Transmission Co., et al., ------ FPC ------, Opinion No. 521, Docket Nos. CP66–110, et al., issued June 20, 1967.

SECURITIES AND EXCHANGE COMMISSION

INTERAMERICAN INDUSTRIES, LTD.

Order Suspending Trading

JANUARY 3, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the capital stock of Interamerican Industries, Ltd., Calgary, Alberta, Canada, being traded in the United States otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15 (c) (5) of the Securities Exchange Act of 1934, that trading in the United States in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period January 4, 1968, through January 13, 1968, both dates inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 68–302; Filed, Jan. 8, 1968; 8:51 a.m.]

[File No. 2–9568 etc.]

RALSTON PURINA CO.

Notice of Application and Opportunity for Hearing

JANUARY 3, 1968.

Notice is hereby given that Ralston Purina Co. ("Company"), File No. 2–9568 (22–1227), File No. 2–21850 (22–3615); has filed an application under clause (ii) of section 310(b) (1) of the Trust Indenture Act of 1939 ("Act") for a finding that the trusteeship of the St. Louis Union Trust Co. ("Union Trust") under two indentures heretofore qualified under the Act and a third indenture not qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under any such indentures.

Section 310(b) of the Act provides in part that if a Trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, in effect, with certain exceptions, that a trustee under an indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Company alleges that:

1. The Company has outstanding $10,109,000 principal amount of its 3⅛ percent Sinking Fund Debentures, issued under an Indenture dated as of April 15, 1962, between the Company and Union Trust, which has been qualified under the Act.

2. The Company has outstanding $34,656,000 principal amount of its 4⅜ percent Sinking Fund Debentures, issued under an Indenture dated as of November 15, 1963, between the Company and Union Trust which also been qualified under the Act.

3. As of February 15, 1967, Ralston Purina of Canada, Ltd., a Canadian corporation (the "Canadian Company"), and a wholly owned subsidiary of the Company, authorized and issued $6 million (Canadian currency) aggregate principal amount of its 6¾ percent Sinking Fund Debentures under a Trust Indenture dated as of February 15, 1967, between the Canadian Company and National Trust Co., Ltd., an Ontario corporation, as Trustee. Payment of these Debentures is guaranteed by the Company under an Indenture of Guaranty dated February 15, 1967, executed between the Company, Union Trust and the purchasers of said Debentures. The Debentures of the Canadian Company were not registered under the Securities Act of 1933 in reliance upon the exemption from registration provided by section 4(2) of said Securities Act of 1933. Neither the indenture between the Canadian Company and National Trust Co., Ltd., nor the Indenture of Guaranty between the Company, Union Trust and such purchasers were qualified under the Act.

4. Both of the indentures under which Debentures of the Company are outstanding are wholly unsecured. The Indenture of Guaranty likewise creates a wholly unsecured obligation of the Company with respect to the Debentures issued by its subsidiary. The Indenture of Guaranty imposes no obligations upon the Company other than those common to an instrument of guaranty. The Company's obligation thereunder is secondary, and the Indenture of Guaranty does not impose upon Union Trust the customary duties and obligations required

of a trustee under an indenture issued to evidence or secure the obligations of an issuer. Any difference between the provisions of the Indenture of Guaranty and the two indentures under which Debentures of the Company are issued and outstanding is unlikely to cause any conflict of interest between the respective trusteeships of Union Trust thereunder.

5. The Company waives notice of hearing, and waives hearing, in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to such application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than January 29, 1968, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission (pursuant to delegated authority).

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 68-303; Filed, Jan. 8, 1968; 8:51 a.m.]

[File No. 2-9153 etc.]

SOUTHERN UNION GAS CO.

Notice of Application and Opportunity for Hearing

JANUARY 2, 1968.

Notice is hereby given that Southern Union Gas Co. (the "Company") File No. 2-9153 (22-1130), File No. 2-9587 (22-1231), File No. 2-12499 (22-1868), File No. 2-13674 (22-2226), File No. 2-16623 (22-2823), File No. 2-21349 (22-3524), File No. 2-22321 (22-3686), File No. 2-26194 (22-4409); has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of the Northern Trust Co. ("Northern") under eight indentures of the Company which have been qualified under the Act and an indenture dated as of December 31, 1967, which is not to be qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Northern from acting as trustee under any of such indentures.

Section 310(b) provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section) it shall within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, in effect, with certain exceptions, that a trustee under an indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both indentures is not so likely to include a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The application of the Company filed on November 17, 1967, alleges that:

1. The Company proposes to issue $7,401,000 principal amount of 5.86 percent Sinking Fund Debentures due December 31, 1992 (the "Proposed Debentures"), under an Indenture dated as of December 31, 1967 (the "Proposed Indenture"), to be executed by the Company with Northern, as trustee. The Company has outstanding $50,790,000 aggregate principal amount of unsecured sinking fund debentures which have been issued under eight existing indentures made between the Company and Northern, all of which have been qualified under the Act.

2. The Proposed Debentures will not be registered under the Securities Act of 1933 in reliance upon section 4(2) of the Securities Act and the Proposed Indenture will not be qualified under the Trust Indenture Act of 1939 in reliance upon section 304(b)(1) of said Act.

3. All existing indentures and the Proposed Indenture are wholly unsecured. The Company is not in default under any of the existing indentures. The differences between the existing indentures and the Proposed Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Northern from acting as trustee under the Proposed Indenture. Aside from differences as to amounts, dates, interest rates, redemption prices and procedures and sinking fund provisions (which vary only as to the dates and amounts of required sinking fund deposits), the provisions of the existing indentures and the Proposed Indenture are substantially identical except as indicated below.

The Proposed Indenture differs from all of the existing indentures, with the exception of the indenture last qualified under the Act, (File No. 2-26194; 22-4409), in the utilization in the Proposed Indenture of the concept of "Included and Excluded Subsidiaries." Certain of the principal covenants in both the indenture last qualified under the Act and in the Proposed Indenture, including those relating to dividend restrictions and the issuance of additional debt, apply only to the Company and its included subsidiaries, which term may be broadly defined as subsidiaries that are principally engaged in the business now conducted by the Company, i.e., the production and distribution of natural gas in this country. Excluded subsidiaries are those which are principally engaged in any other type of business.

The Company has submitted along with and as part of the application, an opinion of its counsel stating, in part that; (a) all of the existing indentures stand on a parity in that they are unsecured and none of the Debentures issued under any of the existing indentures are subordinated to any of the Debentures issued by any of the said indentures, and (b) the Proposed Indenture will likewise stand on a parity with all of the existing indentures in that none of the Proposed Debtentures will be subordinated to any of the Debentures issued under any of the said existing indentures.

The Company waives notice of hearing and waives hearing, in connection with this matter.

For a more detailed statement of the matters of fact and how asserted, all persons are referred to such application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than January 25, 1968, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission (pursuant to delegated authority).

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 68-304; Filed, Jan. 8, 1968; 8:51 a.m.]

[812-2220]

WALSTON AND CO., INC. RAUSCHER PIERCE AND CO., INC.

Notice of Filing of Application for Order of Exemption

JANUARY 3, 1968.

Notice is hereby given that Walston & Co., Inc., and Rauscher Pierce & Co., Inc.

("Applicants"), % Walston & Co., Inc., 111 West Jackson Boulevard, Chicago, Ill. 60604, prospective representatives of a group of underwriters of a proposed offering of shares of Hedge Fund of America, Inc. ("Fund"), a registered management investment company, have filed an application for an exemptive order pursuant to section 6(c) of the Investment Company Act of 1940, 15 U.S.C. sec. 80a–1 et seq. ("Act"). Applicants request that they, and their counderwriters to the extent necessary, be exempted from section 30(f) of the Act to the extent that it adopts section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78p, 48 Stat. 896 ("Exchange Act") in connection with their participation in the proposed underwriting of the Fund. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Fund shares are to be purchased by the underwriters at a price of $13.725 per share, pursuant to an underwriting agreement to be entered into between the Fund, the underwriters represented by Applicants, and Summit Management and Research Corp., Manager for the Fund. Upon the effective date of the Fund's registration statement under the Securities Act of 1933, the shares will be sold to the public at a maximum public offering price of $15 per share. Immediately upon purchase of the Fund shares by the underwriters, the shares will become redeemable.

Under the terms of the proposed underwriting agreement, each underwriter, other than Applicants, is to pay the Fund 20 cents per share for any excess of such underwriter's stated commitment over the number of shares it actually purchases at the closing. In addition, Applicants, but not other underwriters, will be entitled to sell shares to selected dealers, some of whom may be underwriters. For every share tendered to it for redemption or repurchase during the 30-day period following the purchase of the shares by the underwriters, the Fund will be entitled to receive 20 cents from the underwriter or selected dealer who purchased such share for public offering. No sales are to be made pursuant to the underwriting agreement unless at least 1 million shares are sold to the underwriters at the closing.

It is likely that Applicants individually, and possibly other underwriters, will purchase more than 10 percent of the outstanding shares of the Fund. In addition, the aggregate amount of such purchases by Applicants may exceed 50 percent of the outstanding shares. A director and officer of each Applicant and of one other underwriter are directors and stockholders of the Fund.

Applicants state that, at the time of the proposed public offering, there will be no inside or special information concerning the Fund that could be used by the underwriters or their directors, officers, or stockholders to the disadvantage of purchases of the shares, and the only assets of the Fund will be those arising from sales of Fund shares to personnel of the Fund, its manager and the underwriters at the same price these shares will be sold to the underwriters.

Section 30(f) of the Act imposes the duties and liabilities of section 16 of the Exchange Act upon, among others, beneficial owners of more than 10 percent of any class of outstanding securities of, and directors of, a registered closed-end investment company. Section 16(b) of the Exchange Act contains provisions for accountability for profits from purchases and sales or sales and purchases within 6 months of any equity security of the related issuer by those persons covered thereby. Applicants represent that the requested exemption from the provisions of section 30(f) of the Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. They state that the transactions sought to be exempted cannot lend themselves to the practices to which section 16(b) of the Exchange Act was enacted to apply.

Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 24, 1968, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 68–305; Filed, Jan. 8, 1968; 8:51 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 647]

MISSOURI

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of December 1967, because of the effects of certain disasters, damage resulted to residences and business property located in Washington County, Mo.;

Whereas, the Small Business Administration has investigated and received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property, situated in the aforesaid county and areas adjacent thereto, suffered damage or destruction resulting from tornado occurring on December 20, 1967.

OFFICE

Small Business Administration Regional Office, 208 North Broadway, St. Louis, Mo. 63102.

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to June 30, 1968.

Dated: December 22, 1967.

ROBERT C. MOOT,
Administrator.

[F.R. Doc. 68–247; Filed, Jan. 8, 1968; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 522]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 4, 1968.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC 67 (49 CFR Part 340) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served

on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 42487 (Sub-No. 684 TA), filed December 28, 1967. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: V. S. Tyler (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Benzoic* acid, in bulk, in tank vehicles, from Kalama, Wash., to Niagara Falls, N.Y., for 120 days. Supporting shipper: The Dow Chemical Co., 350 Sansome Street, San Francisco, Calif. 94106. Send protests to: District Supervisor, Wm. R. Murdoch, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 49387 (Sub-No. 35 TA) (Correction), filed December 11, 1967, published FEDERAL REGISTER, issue of December 21, 1967, and republished as corrected this issue. Applicant: ORSCHELN BROS. TRUCK LINES, INC., Moberly, Mo. 65270. Applicant's representative: Arnold L. Burke, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Hospital, medical and dental supplies and related articles and materials and supplies used in the manufacture and packaging thereof*, serving the Johnson & Johnson plant and warehouse site, Argonne Industrial District, Will County, Ill., as an off-route point in connection with applicant's presently held authorized regular route operations to and from Chicago, Ill., for 180 days. NOTE: The purpose of this republication is to show correct location of shipper as New Brunswick, "N.J.", in lieu of New Brunswick, Mo. Supporting shipper: Johnson & Johnson, 501 George Street, New Brunswick, N.J. 08903. Send protests to: H. J. Simmons, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 111729 (Sub-No. 254 TA) (Correction), filed December 18, 1967, published in the FEDERAL REGISTER, issue of December 28, 1967, and republished as corrected this issue. Applicant: AMERICAN COURIER CORPORATION, 222–17 Northern Boulevard, Bayside, N.Y. 11361. Applicant's representative: J. K. Murphy, President, 222–17 Northern Boulevard, Bayside, N.Y. 11361. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, and audit and accounting media of all kinds*, between Atlanta, Ga., on the one hand, and, on the other, points in Duval County, Fla., and points in Davidson County, Tenn.; (2) *exposed and processed film and prints, complimentary replacement film, incidental dealer handling supplies, and advertising literature moving therewith* (excluding motion picture film used primarily for commercial theater and television exhibition), between Novi, Mich., on the one hand, and, on the other, points in Ohio and points in West Virginia, for 150 days. NOTE: The purpose of this republication is to correct a portion of the commodity description in (1) above to reflect "business papers", erroneously shown as "between papers" in the previous publication. Supporting shippers: J. C. Penney Co., Inc., Post Office Box 1693, Atlanta, Ga. 30301; A.B.C. Photo, Inc., 1734 West Lafayette Boulevard, Detroit, Mich., 48216. Send protests to: E. N. Carignan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 346 Broadway, New York, N.Y.

No. MC 112750 (Sub-No. 252 TA), filed December 28, 1967. Applicant: AMERICAN COURIER CORPORATION, 222–17 Northern Boulevard, De Bevoise Building, Bayside, N.Y. 11361. Applicant's representative: J. K. Murphy, President, % Applicant. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, written instruments, and business record* (except coin, currency, and negotiable securities) as are used in the business of banks and banking institutions, between Gloucester County, N.J., on the one hand, and, on the other, Philadelphia, Pa., for 150 days. Supporting shipper: The First National Bank & Trust Co., Paulsboro, N.J. 08066. Send protests to: Emilien N. Carignan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 346 Broadway, New York, N.Y. 10013.

No. MC 113678 (Sub-No. 302 TA) (Correction), December 6, 1967, published FEDERAL REGISTER, issue of December 19, 1967, and republished as corrected this issue. Applicant: CURTIS, INC., 770 East 51st Avenue, Denver, Colo. 80216. Applicant's representative: Duane W. Acklie, Post Office Box 2028, Lincoln, Nebr. 68508. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses and frozen fish and salad dressings when moving in the same vehicle with meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, from Denver, Colo., to points in Minnesota; Ohio; Ames, Iowa; and Eugene, Oreg. (2) *Frozen fish and salad dressings* when moving with meat, meat products, meat byproducts and articles distributed by meat packinghouses, from Denver, Colo., to Omaha, Nebr.; Sioux City, Des Moines, and Waterloo, Iowa; Niles, Pontiac, Westland, and Detroit, Mich.; and points in Wisconsin, for 180 days. NOTE: The purpose of this republication is to clearly set forth the territory proposed to be served in (2) above. Supporting shipper: Mapelli-Lindner-Sigman, Ltd., 1624 Market Street, Denver, Colo. 80202. Send protests to: District Supervisor, Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 127684 (Sub-No. 2 TA), filed December 28, 1967. Applicant: SAMARDICK OF OMAHA, INC., 410 South 18 Street, Omaha, Nebr. 68102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Currency and coin*, between Omaha, Nebr., and Glenwood, Red Oak, Villisca, Corning, Creston, Lenox, Bedford, Clarinda, Shenandoah, and Farragut, Iowa, for 150 days. Supporting shipper: Omaha Branch, Federal Reserve Bank of Kansas City, Omaha, Nebr. Send protests to: Keith P. Kohrs, District Supervisor, 705 Federal Office Building, Omaha, Nebr. 68102.

No. MC 128320 (Sub-No. 2 TA), filed December 28, 1967. Applicant: ART QUIRING, 2301 Washington Street, Hamburg, Iowa 51640. Applicant's representative: Donald E. Leonard, 301 NSEA Building, 14th and J Streets, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Food products* from points in Washington, Oregon, California, and Idaho to points in Iowa, for 180 days. Supporting shipper: Hoxie Institutional Wholesale Co., Post Office Box 874, Des Moines, Iowa 50304. Send protests to: Keith P. Kohrs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 705 Federal Office Building, Omaha, Nebr. 68102.

MOTOR CARRIER OF PASSENGERS

No. MC 69260 (Sub-No. 6 TA), filed December 19, 1967. Applicant: GARDEN STATE TRANSIT LINES, INC., 157 Outwater Lane, Garfield, N.J. 07026. Applicant's representative: Herman B. J. Weckstein, Esq., 1060 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers, their baggage, mail and newspapers*, between New York, N.Y., and Saddle Brook, N.J., from 178th Street and Fort Washington Avenue, New York, N.Y., across the George Washington Bridge to Interstate Highway 95, over Interstate Highway 95 to its intersection with Interstate Highway 80, thence over Interstate Highway 80 to Pehle Avenue, Saddle Brook, N.J. exit, thence over Pehle Avenue to its intersection with Saddle River Road, return from said intersection of Pehle Avenue and Saddle River Road over Pehle Avenue to Midland Avenue, thence over Midland Avenue to its intersection with Erie Avenue, thence over Erie Avenue to its intersection with Market Street, thence over Market Street to its intersection with Mayhill Street, thence over Mayhill Street to its intersection with Route 80; and return as follows: over Mayhill Street to its intersection with Market

Street, over Market Street to its intersection with Erie Avenue to its intersection with Midland Avenue, thence over Midland Avenue to its intersection with Pehle Avenue, thence over Pehle Avenue to its intersection with Interstate Highway 80, thence over Interstate Highway 80 to its intersection with Interstate Highway 95, thence over Highway 95 across George Washington Bridge to place of beginning, for 180 days. Supporting shippers: There are 24 supporting parties, names and addresses of whom are on file at the Newark Field Office of the Interstate Commerce Commission at the address shown below. Send protests to: District Supervisor, Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 1060 Broad Street, Newark, N.J. 07102.

No. MC 128753 (Sub-No. 5 TA), filed December 29, 1967. Applicant: ASSOCIATED BUS COMPANY OF OAKLAND, a corporation, 921 Bergen Avenue, Room 772, Jersey City, N.J. 07306. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers* for the account of Metaframe Corp., between the Bronx, N.Y., on the one hand, and, on the other, the plantsite of Metaframe Corp., Maywood, N.J., for 150 days. Supporting shipper: Metaframe Corp., 87 Route 17, Maywood, N.J. 07607. Send protests to: District Supervisor, Walter J. Grossmann, Interstate Commerce Commission, Bureau of Operations, 1060 Broad Street, Room 363, Newark, N.J. 07102.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68-299; Filed, Jan. 8, 1968; 8:51 a.m.]

[Notice 70]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 4, 1968.

Synopses of orders entered pursuant to Section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 279), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-70057. By order of December 29, 1967, the Transfer Board approved the transfer to Raymond G. Wishard, doing business as Wishard Trucking, Chambersburg, Pa., of certificates in Nos. MC-124045 and MC-124045 (Sub-No. 1) issued June 26, 1962, and November 3, 1965, respectively, to D. R. Lingenfelter, Claysburg, Pa., authorizing the transportation of sand, in bulk, from Mapleton and McVeytown, Pa., to points in New Jersey, Delaware, Maryland, West Virginia, the District of Columbia, and certain parts of Ohio and New York, and, dry nepheline syenite, in bulk, from ports of entry in New York on the United States and Canada boundary line, to points in New Jersey, Ohio, Pennsylvania, and West Virginia. Christian V. Graf, 407 North Front Street, Harrisburg, Pa. 17101, attorney for applicants.

No. MC-FC-70071. By order of December 29, 1967, the Transfer Board approved the transfer to Maples & Ogle Transportation Co., Inc., 805 Parkway, Gatlinburg, Tenn., of the operating rights in certificate No. MC-106733 issued October 25, 1949, to New Gatlinburg Inn, Inc., Gatlinburg, Tenn., authorizing the transportation, over regular routes, of passengers, in special and charter operations, in round trip sightseeing or pleasure tours, from Gatlinburg, Tenn., to specified points in Tennessee and North Carolina, and return.

No. MC-FC-70079. By order of December 29, 1967, the Transfer Board approved the transfer to Stacey Transportation Company, a corporation, 325 North Eureka, Post Office Box 37, Redlands, Calif., of the operating rights in certificate No. MC-106125 issued October 23, 1967, to H. H. Stacey and Fred J. Bopp, a partnership, doing business as Stacey Transportation Co., 325 North Eureka, Post Office Box 37, Redlands, Calif., authorizing the transportation of citrus fruits, from Redlands, Calif., and points in San Bernardino County, Calif., within 25 miles of Redlands, to Los Angeles Harbor and Long Beach Harbor, Calif.; and agricultural chemicals, feed, nails, fertilizer, canned goods, deciduous fruits and dried fruits, soya bean meal and fertilizer, and newsprint paper, from and to various points in California.

No. MC-FC-70086. By order of December 29, 1967, the Transfer Board approved the transfer to Alfred Bergman and Lois Bergman, a partnership, doing business as A & A Bergman, Pigeon, Mich., of the operating rights in permits Nos. MC-110981, MC-110981 (Sub-No. 2), and MC-110981 (Sub-No. 6), issued September 10, 1962, October 12, 1962, November 2, 1967, respectively to Alfred Bergman and Melvin Bergman, a partnership, doing business as A & A Bergman, Pigeon, Mich., authorizing the transportation, over irregular routes, of sweet cream, plain and sweetened condensed skimmed milk, plain and sweetened condensed whole milk, cottage cheese, butter, and animal feed, beans, from points in a described portion of Michigan to Ashland and Paducah, Ky., Wheeling, Huntington, and Parkersburg, W. Va., points in Illinois, Indiana, Ohio, and a described portion of Iowa, a described portion of Missouri, fertilizer, from Lockland and Columbus, Ohio, to a described portion of Michigan, feed, from Chicago, Ill., to points in a described portion of Michigan, and from points in the Chicago, Ill., commercial zone, as defined, to points in a described part of Michigan, and fence materials, from Sterling, Ill., to points in a described portion of Michigan, and soybean meal, from Decatur, Ind., and Fostoria, Ohio, to points in a described part of Michigan. William B. Elmer, 22644 Gratiot Avenue, East Detroit, Mich. 48021, attorney for applicants.

No. MC-FC-70104. By order of December 29, 1967, the Transfer Board approved the transfer to Central Port Warehouses, Inc., Carlstadt, N.J., of certificate No. MC-126873 issued July 21, 1965, to Long Island Transportation, Inc., Clifton, N.J., and authorizing the transportation of general commodities, except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Clifton, N.J., on the one hand, and, on the other, points in Ocean County, N.J., points in that part of Monmouth County, N.J., south of New Jersey Highway 33, and points in that part of New Jersey on and north of New Jersey Highway 33, except those points in New Jersey which lie within the New York, N.Y., commercial zone. William Traub, 10 East 40th Street, New York, N.Y. 10016, practitioner for transferee; Bowes and Millner, 744 Broad Street, Newark, N.J. 07102, attorneys for transferor.

No. MC-FC-70121. By order of December 29, 1967, the Transfer Board approved the transfer to Clendining Express, Inc., Lindenwold, N.J., of certificate No. MC-636 and corrected certificate No. MC-636 (Sub-No. 2) the former issued December 30, 1955, to Frank A. Clendining, Sr., and Frank A. Clendining, Jr., a partnership, doing business as Clendining Express, Lindenwold, N.J., and the latter issued September 6, 1967, to Frank A. Clendining, Sr., Otillia F. Clendining, Executrix, and Frank A. Clendining, Jr., a partnership, doing business as Clendining Express, Lindenwold, N.J., authorizing the transportation of general commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Philadelphia, Pa., and Berlin, N.J., serving all intermediate points and the off-route points of Westmont, Haddonfield, Gibbsboro, Ashland, Collingswood, Clementon, Laurel Springs, Gloucester, and Pine Valley, N.J., and the plantsite of the Precision Packaging Co., and the site of the Moorestown Shopping Center on New Jersey Highway 38, both in Mount Laurel Township, Burlington County, N.J., operating over the following regular route: From Philadelphia, Pa., over U.S. Highway 30 to Berlin, N.J., and return. James H. Sweeney, 902 Spruce Avenue, Oaklyn, N.J. 08107, practitioner for applicants.

No. MC-FC-70124. By order of December 29, 1967, the Transfer Board approved the transfer to Wymore Transfer Co., a corporation, Oregon City, Oreg., of the

operating rights in certificate No. MC–475, issued by the Commission August 9, 1950, to Eugene Wymore, doing business as Wymore Transfer Co., Oregon City, Oreg., authorizing the transportation, over a regular route, of paper, paper products, paper mill supplies, machinery, and equipment, between Oregon City, Oreg., and Camas, Wash., and of household goods, as defined, between West Linn and Oregon City, Oreg., on the one hand, and, on the other, points in Washington. Earle V. White, 2400 Southwest Fourth Avenue, Portland, Oreg. 97201, attorney for applicants.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68–300; Filed, Jan. 8, 1968; 8:51 a.m.]

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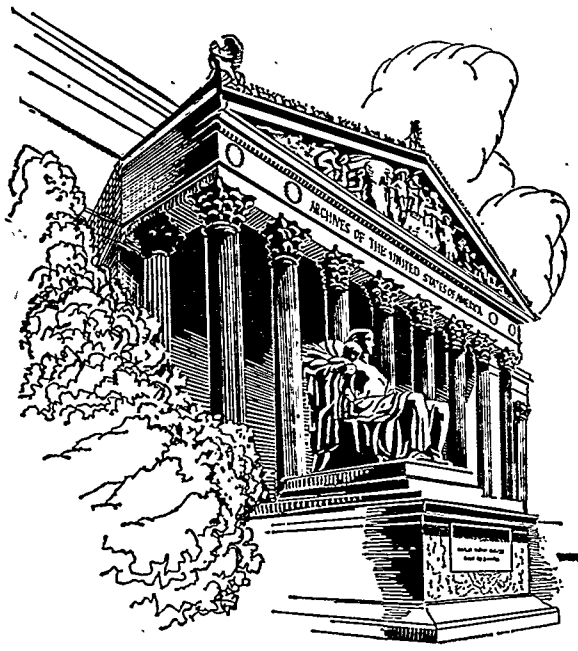
PART II

SMALL BUSINESS ADMINISTRATION



SMALL BUSINESS INVESTMENT COMPANIES

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 4]

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Pursuant to authority contained in section 308 of the Small Business Investment Act of 1958, Public Law 85-699, 72 Stat. 694, as amended, there is revised, as set forth below, Part 107 of Subchapter B, Chapter I of Title 13 of the Code of Federal Regulations.

Information and effective date. On November 29, 1967, notice of proposed rule making was published in the FEDERAL REGISTER concerning the revision of Part 107 of the SBA regulations. (32 F.R. 16368-16379) After careful consideration of the comments received, SBA has determined to adopt the revised provisions, set forth below, as being in the best interests of the SBIC program. Textual changes have been made to modify and adjust new regulatory controls to the requirements of Licensee companies. It is felt that these changes will facilitate fair and equitable application of the revised regulation. For example, the definition of "Venture Capital," in § 107.3, has been modified by eliminating the reference to "unsecured" in connection with debentures or loans otherwise qualifying as Venture Capital, by requiring such financing to be nonamortizable during the first three years as well as subordinated to borrowings from other institutional lenders. The term, "institutional lenders," has been defined in § 107.3 as meaning banks, insurance companies, and other concerns whose regular course of business entails the making of commercial and industrial loans or investments.

The definition in § 107.202(b) of the term, "total funds available for investment," has been changed. As finally adopted, the definition includes "Total Short-Term Assets" and "Total Loans and Investments" of a Licensee required to be set forth as items 8 and 14 of page 1 of its Financial Report, SBA Form 468. The Instructions for Preparation of the Financial Report, SBA Form 468 (9-67) are printed below as Appendix 2 to revised regulations. § 107.202(b) has also been expanded to include a provision making it clear that venture capital investments shall be valued on the same basis as the assets comprising Licensee's "total funds available for investment."

SBA has determined that it would be advisable to delete the requirement, published as proposed § 107.101(c), that every Licensee must have a board of directors consisting of at least five members, 40 percent of whom must be "independent" of any other affiliation with the Licensee or its Associates. Accordingly, the revised regulation omits this provision.

The provision that each Licensee shall have a full-time qualified officer or general manager in charge of its operations has been rephrased to require the maintenance at Licensee's office of "qualified management" available to the public during regular business hours (§ 107.101 (a)).

Certain provisions of § 107.901, *Control over small business concern,* have been substantially modified. For example, the proposed requirement that Licensees obtain prior approval for control divestiture plans has been changed to SBA postapproval.

In addition, provision has been made that such plans shall be deemed approved after the lapse of 90 days from date of filing with SBA, unless the Licensee is otherwise notified in writing by SBA during that period (§ 107.901(d)). As finally adopted, § 107.901 eliminates the proposed requirement concerning prior SBA approval for additional financing supplied to a portfolio concern subsequent to Licensee's assumption of temporary control. In lieu thereof, the Licensee must report the additional financing and resubmit its control divestiture plan for review in the light of the changed circumstances incident to such financing.

New paragraph (b)(4) has been added to § 107.504, *Special Discretionary Portfolio,* authorizing Licensees, in certain specified instances, to purchase stock of a small concern from underwriters participating in a public offering of such stock. This reinstates, subject to the overall limitation of Licensee's Special Discretionary Portfolio, existing authority on the subject (i.e., § 107.750 of Revision 3).

As set forth below, § 107.1005(a) prohibits sales of portfolio securities to be made to Associates of a Licensee unless an exemption in writing is granted by SBA. As a prerequisite to granting such exemption, the Licensee much demonstrate that the terms of the proposed sale are no less favorable to the Licensee than those obtainable elsewhere. Section 107.-1005(b) prohibits sale of portfolio securities to be made to a competitor of the portfolio concern unless (1) approved by any such concern not under Licensee's control or (2) prior SBA approval is obtained. Relevant details of all sales to competitors of the portfolio concern must be reported to SBA.

Proposed § 107.808, *Idle Funds,* would have required Licensees' funds (other than those invested in accordance with the last sentence of section 308(b) of the Act) to be placed on demand deposit, or in certificates of deposit maturing not more than one year after issuance, "but only up to the insured amount," in FDIC-insured banks. As finally adopted, § 107.808 deletes the phrase, "but only up to the insured amount." This reinstates and continues the authority now exercised by Licensees under former § 107.710 of Revision 3.

Section 107.702 provides, among other things, that an officer or director of one Licensee may not be (1) an officer or director of another Licensee or (2) "* * * an officer or director of any person which directly or indirectly controls, or is controlled by, or is under common control with, another Licensee." The quoted language, which has been added, clarifies and carries out more precisely the original intent of the regulation.

Section 107.101(d) requires each Licensee, unless otherwise specifically authorized in writing by SBA, to maintain a diversified investment policy, i.e., it may not, as of the close of each full fiscal year, have more than one-third in dollar amount of its portfolio invested in small concerns listed in any single Major Group of the Standard Industrial Classification Manual. Unanticipated prepayment of an outstanding investment in one Major Group may unavoidably cause Licensee's investments in another Major Group to exceed the one-third limitation as of the close of its fiscal year. In order to protect the Licensee in such instances, provision has been made in § 107.101(d) that prepayment and similar events beyond Licensee's control shall constitute an appropriate basis for determining that Licensee is not in violation of the regulation.

As finally adopted, § 107.1003 establishes a rebuttable presumption of inactivity where a Licensee, which has at least one-fourth of its assets in Idle Funds "on March 31 of any year," has not made any new financing "during the past 12-month period" totaling at least one-fourth of "an average of the amount of its Idle Funds on such March 31 and on the immediately preceding September 30." The quoted language has been incorporated into § 107.1003 to add flexibility to and facilitate enforcement of the regulatory provision in a fair and orderly manner.

Section 107.1002 provides that capital impairment exists whenever a Licensee's retained earnings deficit exceeds 50 percent of its paid-in capital and paid-in surplus. An "early-warning" report must be filed with SBA when the retained earnings deficit exceeds 35 percent of paid-in capital and paid-in surplus. Clarifying language has been added to § 107.-1002 to the effect that treasury stock may not be included as part of Licensee's paid-in capital and paid-in surplus.

Section 107.1004, *Conflicts of interest,* prohibits a Licensee from supplying funds to a small concern for the purpose of discharging an obligation to an Associate of such Licensee (paragraph (b)(4)) and, in addition, restricts "joint financing" of the same concern by a Licensee and its Associates (paragraph (b)(6)). A new provision has been added to § 107.1004 stating that subparagraphs (b)(4) and (b)(6) shall not apply to transactions by Associates in the normal course of business involving lines of credit or short-term financing.

Provisions relating to processing fees in connection with an Application for License or an application for SBA approval of a transfer-of-control transaction, as set forth in the proposal published on November 29, 1967, have been incorporated into §§ 107.102 and 107.701(f). The November 29, 1967 proposal explained the underlying considerations governing the adoption of fair and equitable user charges.

SBA's Audit and Examination Guide (Revised Jan. 9, 1968), revised Instructions for Preparation of the Financial Report, SBA Form 468 (9–67), and revised Instructions for Preparation of the Program Evaluation Report, SBA Form 684 (1–68), which are referred to in §§ 107.1104, 107.1102(e), and 107.1102(f), respectively, are published below as Appendices 1, 2, and 3 to the SBIC Regulation.

A number of existing interpretations have also been carried over, in condensed form, into present Revision 4 as §§ 107.1401 to 107.1411, inclusive. As stated in the notice of proposed rule making (32 F.R. 16368), these interpretations are exempt from the advance notice requirements of 5 U.S.C. 553.

In view of the necessity of promptly applying the revised provisions to the program authorized by the Small Business Investment Act of 1958, as amended, Revision 4 shall become effective upon publication in the FEDERAL REGISTER, except for § 107.3 (Definition of Venture Capital), § 107.201 (SBA funds to Licensee), § 107.202 (SBA funds available under section 303(b)(2) of the Act based on venture capital financing), and § 107.811 (Additional investment by bank), which shall become effective as of January 9, 1968, simultaneously with the effective date of the Small Business Investment Act Amendments of 1967, Public Law 90–104, approved on October 11, 1967, 81 Stat. 268, 269.

Dated: January 2, 1968.

ROBERT C. MOOT,
Administrator.

REGULATIONS

AUTHORITY: The provisions of this Part 107 issued under sec. 308, 72 Stat. 694, as amended; 15 U.S.C. 687.

NOTE: Forms filed with the original document.

REGULATIONS

§ 107.1 Scope of Part 107.

The regulations in this Part 107 implement the functions, powers, and duties conferred on SBA by the Small Business Investment Act of 1958, as amended.

§ 107.2 Information, forms, and instructions.

All SBA forms and instructions for their preparation referred to throughout the regulations in this Part 107 have been filed with the Office of Federal Register along with the original document. Copies may be obtained from SBA, 1441 L Street NW., Washington, D.C. 20416. All applications, reports, or other forms filed with SBA must be completed in accordance with applicable instructions.[1]

DEFINITIONS

§ 107.3 Definition of terms.

Act. "Act" means the Small Business Investment Act of 1958, as amended.

Associate of a Licensee. "Associate of a Licensee" means:

(a) An officer, director, general manager, or investment adviser of such

[1] Instructions for Preparation of the Financial Report, SBA Form 468 (9–67), and Instructions for Preparation of the Program Evaluation Report, SBA Form 684 (1–68), are printed in Appendices 2 and 3 to Part 107.

Licensee, or any person or firm regularly serving such Licensee in the capacity of attorney at law; or

(b) Any person which owns or controls, directly or indirectly, 10 or more percent of any class of stock of such Licensee; or

(c) Any officer, director, partner, general manager, employer, or employee of any person described in paragraphs (a) and (b) of this section; or

(d) Any person which directly or indirectly controls, or is controlled by, or is under common control with, a Licensee or any person described in paragraphs (a) and (b) of this section; or

(e) Any close relative of any person described in paragraphs (a) and (b) of this section; or

(f) Any concern in which (1) any person described in paragraphs (a) through (e) of this section is an officer or director or (2) any such person (or group of two or more such persons acting in concert) owns or controls, directly or indirectly, 10 or more percent equity interest (exclusive of any interest attributable solely to ownership of equity interests in the Licensee); and

(g) For the purposes of this definition, any person which has held any of the positions or relationships described in paragraphs (a) through (f) of this section within 6 months prior to the date of financing provided by the Licensee, or which holds any such position or relationship within 6 months after the date of such financing, shall be deemed to have such position or relationship as of the date of Licensee's financing.

Close relative. "Close relative" means ancestor, lineal descendant, brother or sister and lineal descendants of either, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

Control. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or a small business concern, whether through the ownership of voting securities, by contract, or otherwise.

Debtor Licensee. "Debtor Licensee" means a Licensee indebted to SBA, including SBA guaranties and commitments with respect thereto.

Institutional Lender. "Institutional Lender" and "Lending Institution" means banks, insurance companies, and other concerns whose regular course of business entails the making of commercial and industrial loans or investments.

Investment Adviser. "Investment Adviser" of a Licensee means a person who, pursuant to written contract, regularly furnishes advice to such Licensee with respect to the acquisition, servicing, or disposition of portfolio securities, or securities acquired as assets in liquidation. The provisions of § 107.809 govern Licensee's employment of an Investment Adviser.

License. "License" means the grant of authority, evidenced by a certificate issued by SBA pursuant to section 301 of the Act, authorizing a company to conduct operations solely as a Federal Licensee in accordance with the provisions of the Act and regulations thereunder.

Licensee. "Licensee" means a corporation chartered under State law, and granted a license by SBA.

Person. "Person" means a natural person or legal entity.

Portfolio. "Portfolio" means the securities representing a Licensee's total outstanding financing of small business concerns. It does not include Idle Funds or assets acquired in liquidation.

Portfolio concern. "Portfolio concern" means a small business concern financed by a Licensee in exchange for debt or equity securities which are still outstanding and constitute part of Licensee's Portfolio.

Real estate investment. "Real estate investment" means a Licensee's financing of a small business concern which is classified as a real estate concern under Major Group 65 of the Standard Industrial Classification Manual prepared by the Bureau of the Budget, and available from the U.S. Government Printing Office.

1940 Act Company. "1940 Act Company" means a Licensee which is registered under the Investment Company Act of 1940.

SBA. "SBA" means the Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

Small business concern. "Small business concern" means a concern (including affiliates as defined in § 121.3–2), which for purposes of size eligibility, meets the applicable size standards and criteria set forth in § 121.3–11 of Part 12 of this chapter.

Venture Capital. For purposes of this part, the following types of financings will be considered Venture Capital:

1. Common and Preferred Stock with no repurchase requirement for 5 years, except as may be specifically approved by SBA under § 107.901 for purposes of relinquishing control of a small business concern.

2. Any right to purchase such stock.

3. Debentures or loans (whether or not convertible or having stock purchase rights) which carry an effective interest rate of not to exceed 10 percent, are subordinated (including security interests against the assets of the small concern) by their terms to all borrowings of the small concern from other institutional lenders, and have no part amortized during the first 3 years.

Operational Requirements

§ 107.101 Operational reqirements.

New and existing Licensees shall comply with the following requirements:

(a) *Management.* Each Licensee shall have and maintain qualified management in charge of its operations and available at its office to the public. A common manager may be employed by two or more Licensees, subject to prior written SBA approval. A general manager, or common manager, shall be deemed an officer of such Licensee.

(b) *Office.* The Licensee shall maintain a reasonably accessible office, which will display the name of the Licensee and be open to the public during regular business hours. The License certificate shall be displayed in a prominent place in the principal office.

(c) *Diversified investment policy.* Unless specifically authorized in writing by SBA, a Licensee shall not maintain more than one-third of its portfolio, as of the close of any full fiscal year, in any small business concern or concerns classified under any single Major Group of the Standard Industrial Classification Manual issued by the Bureau of the Budget. Prepayments of outstanding financings or similar events occurring beyond the control of the Licensee, within the fiscal year, shall be disregarded for purposes of determining whether the Licensee meets the foregoing requirement as of the close of its fiscal year.

(d) *Minimum capital.* Every Licensee shall have a combined private paid-in capital and paid-in surplus in an amount (1) not less than $150,000, and (2) adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with the Act and Regulations.

(e) *Borrowed funds.* Shareholders owning 10 or more percent of any class of Licensee's stock may not use borrowed funds in purchasing said stock, unless the net worth of each such shareholder is equal to at least twice the amount borrowed.

(f) *Time-limit for compliance.* Existing Licensees shall bring themselves into compliance with the requirements of paragraphs (a) and (b) of this section not later than June 30, 1968.

Procedure for Obtaining License

§ 107.102 License application.

The license application shall be submitted on SBA Form No. 415 in accordance with accompanying instructions. A license fee of $500 shall be paid to SBA simultaneously with the filing of such application.

§ 107.103 Public notice.

SBA shall cause notice to be published in the Federal Register setting forth relevant information concerning the filing of the application for license. The notice shall include the name and location of the proposed Licensee, the area (or areas) in which it is to commence operations, the names and addresses of its Agent for Correspondence and of its officers, directors, and owners of 10 or more percent of its capital stock, and such other information as SBA may deem appropriate. The notice shall provide an opportunity to submit written comments within a designated period of time. A similar notice as prescribed by SBA, shall be published in a newspaper of general circulation in the city or local area (or areas) where the proposed Licensee is to commence operations, and a copy thereof shall be furnished to SBA within 10 days after such publication.

§ 107.104 Transferability of license.

A license is not transferable in any manner except under circumstances expressly approved in writing by SBA.

§ 107.105 Surrender of license.

A Licensee shall not surrender its license without prior written approval of SBA. Request for such approval shall be accompanied by Licensee's offer of immediate payment of all debts owing to SBA, or by a plan satisfactory to SBA for the fair and orderly liquidation of such obligations. Upon receipt of Licensee's request, SBA may remove Licensee's name from its published lists of Licensees, and may conduct an examination of the Licensee to ascertain the state of its affairs. In granting its approval, SBA may impose such terms and conditions as it may determine appropriate.

BORROWING BY LICENSEE

§ 107.201 SBA funds to Licensee.

Application for the purchase of debentures pursuant to section 303(b) of the Act shall be submitted to SBA on SBA Form No. 416 in accordance with accompanying instructions.

§ 107.202 SBA funds available under section 303(b)(2) of the Act based on venture capital financing.

(a) In order to qualify for SBA funds under section 303(b)(2) of the Act, at least 65 percent of a Licensee's total funds available for investment must be actually invested (or committed) in venture capital financing of small business concerns.

(b) The term, "total funds available for investment," shall mean total short-term assets and total loans and investments of a Licensee required (in accordance with the Instructions for Preparation of the Financial Report, SBA Form 468 (9–67)) to be set forth as Items 8 and 14, respectively, on Page 1 of the Financial Report, SBA Form 468 (9–67), submitted by such Licensee. Venture capital investments, as defined in § 107.3, shall be valued on the same basis as Licensee's assets comprising its "total funds available for investment."

(c) Maintenance of venture capital ratio: A Licensee indebted pursuant to section 303(b)(2) of the Act shall maintain at least the ratio required by (b) thereof as of March 31 and September 30 of each year: *Provided, however,* That subject to SBA approval a Licensee may temporarily maintain a lesser ratio. Approval may be granted to the extent necessary in appropriate cases, including prepayments of venture capital investments, raising of additional private capital, and loan funds recently provided to the Licensee.

§ 107.203 SBA sale of securities evidencing loan to Licensee.

SBA may, in its discretion and upon such terms and conditions and for such consideration as shall be deemed to be reasonable, sell, assign, transfer or otherwise dispose of any debenture, or other evidence of debt or security held in connection with any loan made by SBA under the Act.

§ 107.204 Collection or compromise of Licensee's indebtedness to SBA.

The Administrator or his delegate may, in his discretion, and upon such terms and conditions and for such consideration as he shall deem reasonable, collect or compromise all obligations assigned to or held by SBA and all legal and equitable rights accruing to it in connection with such obligations.

FINANCING OF SMALL BUSINESS CONCERNS (EQUITY CAPITAL FINANCING; LONG-TERM LOANS AND OTHER PERMISSIBLE FINANCING)

§ 107.301 General.

(a) *Minimum period of financing and maximum amortization.* Except as otherwise provided for in these regulations, all financing of small business concerns by a Licensee shall be for a minimum period of five (5) years, but voluntary prepayment shall be permitted. Amortization during the first 5 years shall not be required at the rate exceeding an accumulated average of 20 percent of principal per year.

(b) *Maximum interest rate and related charges.* The maximum annual cost to a small business concern for average outstanding net funds advanced or guaranteed by the Licensee shall not exceed the lesser of:

(1) The maximum allowable cost prescribed by applicable State or local law; or

(2) Fifteen (15%) percent.

Cost shall include all interest and discount as well as all fees, commissions, charges, etc. (other than charges for management consulting services duly rendered), against such concern at the time of the financing. Such fees, charges, etc. shall be treated as additional discount for this purpose.

(c) *Twenty (20%) percent limitation.* (1) Without prior written SBA approval, the aggregate amount of obligations and securities acquired and for which commitments or guarantees may be issued by any Licensee for any single small business concern (including affiliated concerns as defined in Part 121 of this chapter) shall not exceed twenty (20%) percent of Licensee's combined paid-in capital and paid-in surplus.

(2) For this purpose, the combined paid-in capital and paid-in surplus of any SBIC licensed prior to January 1, 1968, shall consist of (i) its paid-in capital and paid-in surplus and (ii) the following portions of the funds outstanding from SBA through the issuance of subordinated debentures as of January 1, 1968, or on January 1 of each of the following calendar years, whichever is less: (*a*) One hundred (100%) percent, during 1968; (*b*) seventy-five (75%) percent, during 1969; (*c*) fifty (50%) percent, during 1970; (*d*) twenty-five (25%) percent, during 1971; and (*e*) zero, during 1972 and thereafter: *Provided, however,* That a reduction of Licensee's investment limit as a result of the operation of this subparagraph shall not impair the validity of any prior investment or commitment made in accordance with applicable provisions in effect at the time such investment or commitment was entered into.

(3) The twenty (20%) percent limitation of Licensee's investments in a single concern shall apply to the amount of funds disbursed and commitments issued to a portfolio concern, as distinguished from the face amount of the portfolio security. However, a write-down in carrying value of a portfolio security shall not reduce the amount which is computed against the limitation.

(d) *Short-term financing to protect investment.* Short-term advances may be made to a portfolio concern when reasonably necessary to protect Licensee's existing long-term investment in such concern, but the sum of such advances and the outstanding amount of its previous investment shall not exceed the 20 percent limit prescribed by paragraph (c) of this section. Such short-term advances may not be made if the purpose is to take care of the normal short-term requirements of the small business concern.

(e) *Size status declaration.* No financing (or management consulting services) shall be provided by a Licensee to any business concern unless (1) the Licensee and such concern have executed SBA Form 480, Size Status Declaration, including Licensee's determination that applicable size standards have been met, or (2) at the request of the Licensee or such concern, SBA has determined that the latter is a small business concern. The Licensee shall retain the completed SBA Form 480 as part of its records available for examination by SBA.

(f) *Settlement statement.* Upon the making of each financing of a small business concern, Licensee shall prepare a settlement statement describing the amount and purpose of financing, the type of security or other instrument evidencing Licensee's financing, interest rate, the amount of discount, fees, commissions, and charges and the percentage of actual or potential ownership in the small business concern represented by the Licensee-held financing documents and accompanying rights. The original of the settlement statement shall be furnished to the small business concern and a receipted copy thereof, together with the financial statements of such concern, shall be retained by the Licensee as a part of its records available for examination by SBA.

(g) *Nondiscrimination.* Debtor Licensees shall require small business concerns financed by them after January 9, 1968, to certify on SBA Form No. 652–D that they will not illegally discriminate in their operations, employment practices or facilities, as set forth in Part 113 of this chapter. Such certification shall be retained by the Licensee as a part of its records available for examination by SBA.

EQUITY CAPITAL

§ 107.302 Equity capital.

(a) "Equity capital" means funds received by an incorporated small business concern from a Licensee as the consideration for the issuance of Equity

Securities by such concern to such Licensee.

(b) Equity Securities means:

(1) Certificates of stock of any class with or without a right to convert to another class of stock or containing rights or privileges in the nature of stock warrants or options.

(2) Instruments which evidence a debt and which provide a right or privilege to convert all or any portion of the debt instruments into stock of the small business concern, or provide nondetachable or detachable stock purchase warrants or options, or provide both a right or privilege to convert all or any part of the debt instruments into stock and also detachable stock purchase warrants or options.

§ 107.303 Stock options or warrants; conversion rights.

(a) The total cost of all shares of stock which may be acquired through the exercise of options, warrants, or conversion rights shall not exceed the amount of Equity Capital supplied to the small business concern.

(b) Where short-term financing is furnished by a Licensee to protect its interests in previously acquired Equity Securities issued by a portfolio concern, such short-term financing may also incorporate stock acquisition rights on terms and conditions similar to those provided for in connection with the original financing.

(c) Stock purchase warrants or options issued in connection with Equity Securities shall expire not later than 10 years from the date of the issuance of such Equity Securities.

§ 107.304 Refinancing; first refusal on new indebtedness.

Whenever a Licensee provides Equity Capital to a small business concern, it may require such concern to (a) refinance any or all of its outstanding indebtedness so that the Licensee is the only holder of any evidence of indebtedness of such concern and/or (b) agree not to incur any new indebtedness without first obtaining Licensee's approval and afford such Licensee an opportunity to finance such new indebtedness: *Provided, however,* That the Licensee shall allow appropriate exceptions for open account or other short-term credit.

LONG-TERM LOANS

§ 107.401 Provisions applicable to long-term loans.

See section 305 of the Act and § 107.301 of the regulations of this part.

OTHER PERMISSIBLE FINANCING

§ 107.501 SBIC guarantee of loans.

A Licensee may guarantee to lending institutions up to ninety (90) percent of (a) the obligation of a portfolio concern under any note, debenture, or other evidence of indebtedness or (b) short-term advances to such concern: *Provided, however,* That (1) the total amount for which Licensee may be liable on such guarantees shall not exceed the amount of Licensee's debt or equity financing of such concern and (2) such financing plus the amount of the guarantees do not exceed the 20 percent limit applicable to investments in a single concern under § 107.301(c). Guarantees may be issued only at the request of the portfolio concern or where necessary to protect Licensee's existing investment in such concern.

§ 107.502 Acquisition of stock options or warrants from an affiliate of a portfolio concern.

A Licensee may, in exchange for financing provided to a portfolio concern, acquire stock purchase warrants or options in an affiliated concern, as defined in § 121.3-2 of this chapter.

§ 107.503 Commitments.

(a) *General.* A Licensee is authorized to enter into a commitment to furnish financing to a small business concern. A reasonable commitment fee may be charged.

(b) *Repayment period as to funds advanced pursuant to Licensee's commitment.* (1) Where a Licensee enters into a commitment to finance a small business concern, disbursement in whole or in part to be made on the request of such concern, it shall be lawful (notwithstanding the maturity provisions of § 107.301(a)) to provide for repayment as follows:

(i) Any funds advanced during the first 2 years of the commitment period may become due and payable 5 years after date of the commitment; and

(ii) Any funds subsequently advanced during the commitment period may be for a period of 3 years from respective dates of disbursement.

(2) Amortization of each disbursement made shall not be required at an annual average rate in excess of the principal amount thereof divided by the number of years of the applicable repayment period.

(c) *Stock options and warrants.* Where a Licensee enters into a commitment to provide financing to a small business concern, and the financing agreement calls for the issuance of stock options or warrants, Licensee may acquire such options or warrants up to the full amount of funds disbursed, and up to 25 percent of the undisbursed portion of any commitment obligation not attributable to any default on Licensee's part.

§ 107.504 Special Discretionary Portfolio.

(a) *Authorization.* A Licensee may establish and maintain a Special Discretionary Portfolio. The maximum amount which may be invested and outstanding in such portfolio at any time shall not exceed 20 percent of the Licensee's total adjusted assets as of the date of its most recently required financial report to SBA. "Total adjusted assets" means total assets reduced by outstanding indebtedness of the Licensee to SBA and other loans having maturities of less than 1 year.

(b) *Investments permitted.* Notwithstanding otherwise applicable provisions of this Part 107 (which are hereinafter more specifically identified in subparagraphs of this paragraph), except restrictive provisions required under the Act, a Licensee may make the following types of investments up to the maximum authorized by paragraph (a) of this section:

(1) *Amortization rate of forty (40%) percent per annum.* Notwithstanding the provisions of § 107.301(a), financing with a minimum term of 5 years amortized at a rate not exceeding 40 percent per annum of the declining principal balance outstanding, except for the final year of the term.

(2) *Short-term financing of portfolio concerns.* Notwithstanding the provisions of § 107.301(a), financing with a term of less than 5 years to a portfolio concern when it constitutes a reasonably necessary part of the overall sound financing of such concern pursuant to the Act. This authority shall supplement that available to Licensees under § 107.301(d) relating to short-term financing to protect a Licensee's investment, but the sum of all short-term financing for any purpose and the outstanding amount of Licensee's long-term investment in such concern shall not exceed the 20 percent limit prescribed by § 107.301(c).

(3) *Equity securities of portfolio concerns purchased from nonissuer.* Notwithstanding the provisions of § 107.302, equity securities of a portfolio concern purchased in the open market or through negotiated transactions when such acquisition constitutes a reasonably necessary part of the overall sound financing of such concern pursuant to the Act.

(4) Notwithstanding the provisions of § 107.302 and 107.401, a Licensee may, within 90 days after an offering is first lawfully made, consummate the purchase of debt or equity securities issued by a small business concern and offered for sale by or through an underwriter in connection with a public offering thereof. If the latter consists of a mixed offering of newly issued as well as previously issued and outstanding securities, purchases made by Licensees shall be limited to newly issued securities. A Licensee may rely on a written certification from the underwriter as to the origin of the securities purchased.

MANAGEMENT CONSULTING SERVICES

§ 107.601 Management consulting services.

(a) *Nature of services.* Management consulting services shall consist only of advice with respect to the financial, management and operating activities of a small business concern; and shall not include performance by the Licensee of any financial, management or operating activity of the small business concern. The words, "management consulting services", shall have the same meaning as the phrase, "consulting and advisory services", in section 308(b) of the Act.

(b) *Services through independent contractor.* Management consulting services

may be performed through an independent consultant under contract with the Licensee, whether or not such consultant has similar contracts with other Licensees.

(c) *Records.* A Licensee shall maintain a record for examination by SBA of the time spent and charges made with respect to management consulting services performed for each small business concern financed by the Licensee. Such charges shall not exceed comparable reasonable charges by established professional non-Licensee consultants and consulting firms.

§ 107.602 Wholly owned corporation for management consulting services.

(a) *Organization of subsidiary.* A Licensee may organize a corporation for the sole purpose of providing management consulting services subject to the provisions of § 107.601.

(1) All of its stock shall be owned and held by such Licensee; the parent-Licensee shall not sell, transfer or otherwise divest itself of any part of such stock, but it may transfer back any part thereof to the treasury of the wholly owned subsidiary corporation, whereupon such stock shall be forthwith retired and canceled. If the subsidiary corporation is liquidated, its charter shall be surrendered and terminated.

(2) Each officer and director of the subsidiary corporation must be at the same time either an officer or director of the parent-Licensee.

(3) Licensee's financial investment in its subsidiary corporation shall not exceed 1 percent of Licensee's paid-in capital and paid-in surplus. Advances and other receivables due the parent-Licensee by its subsidiary corporation shall not exceed 1 percent of Licensee's paid-in capital and paid-in surplus.

(b) *Licensee's responsibility.* The parent-Licensee shall be responsible for compliance by its subsidiary corporation with the Act and regulations pursuant thereto. Reports submitted to SBA by the parent-Licensee shall reflect consolidated figures covering the activities of both corporations. The subsidiary shall make such separate reports concerning its activities as shall be required by SBA; it shall be subject to examination and in the event of its failure to make required reports or to submit to SBA examinations, such failure may be acted upon by SBA as an act of noncompliance on the part of the parent-Licensee which shall subject the latter to the imposition of penalties or other sanctions authorized by the Act and regulations thereunder.

§ 107.603 Services to banks or other investors or lenders.

A Licensee may render services for and receive compensation from banks or other investors or lenders only in connection with the financing of, or the providing of management consulting services to, a small business concern by the Licensee in participation or cooperation with such bank or other investors or lenders.

CONTROL OF LICENSEE

§ 107.701 Changes in ownership or control of Licensee.

(a) Transfer of control of a Licensee by any means whatsoever shall be subject to prior written approval of SBA.

(b) Prior approval requirements: Prior written approval of SBA shall be required in case of—

(1) A proposed transfer of 10 or more percent of the capital stock issued by a Licensee; or

(2) A proposed transfer which would result in the acquisition of beneficial ownership by any person or affiliated group of persons of 10 or more percent of its capital stock; or

(3) Any proposed change with respect to the beneficial ownership of its capital stock which involves or results in a change in control over a Licensee.

(c) Unless prior written approval of SBA is obtained, no such transaction shall be consummated and neither the Licensee, nor any of its officers, directors, employees or other persons acting on its behalf shall:

(1) Register on its books any transfer of shares to the proposed new owner (or owners); or

(2) Permit the proposed new owner (or owners) to exercise voting rights with respect to said shares or participate in any manner in the conduct of Licensee's affairs.

(d) Terms used:

(1) "Transfer", "stock transfer", or "transfer of shares" refers to the aggregate amount of shares which any person or affiliated group of persons transfers or undertakes to transfer during any six (6) month period.

(2) "Exercise of voting rights with respect to shares of Licensee's capital stock" shall include directly or indirectly procuring or voting any proxy, consent, or authorization as to such voting rights at any shareholders' meeting.

(3) "Participation in the conduct of Licensee's affairs" shall include access to, custody of, or control over Licensee's corporate books, records, funds, or other assets; participation directly or indirectly in any disposition thereof; or serving as an officer, director, employee or agent of such Licensee.

(e) Transferors' liability: SBA may in its discretion, as a condition of granting or renegotiating loans to a Licensee, require the controlling shareholder(s) to enter into a written agreement assuming personal liability for such Licensee's indebtedness to SBA, but only in the event of their direct or indirect participation in any violation of the prior approval requirements of this section applicable to transfers of control. Such personal liability will terminate if SBA subsequently approves the transfer of control and so notifies the transferor(s) in writing.

(f) Application for approval: Application for prior SBA approval shall be promptly filed by the Licensee and by other parties in interest by appropriate written notice to SBA. Such application shall be accompanied by a processing fee in the amount of $100 for each officer, director, owner of 10 or more percent of Licensee's stock, or other interested party involved in a proposed change of control: *Provided, however,* That the processing fee shall not exceed $400 for any one transaction.

(g) Public notice: SBA shall cause notice to be published in the FEDERAL REGISTER setting forth information concerning the filing of an application for approval of a proposed transfer of control. The notice shall include the name and location of the Licensee and of the proposed transferees who will own 10 or more percent of any class of its stock, and such other information as SBA may deem appropriate. The notice shall provide interested parties an opportunity to submit written comments, for SBA's consideration within a specified period of time. A similar notice as prescribed by SBA shall also be published in a newspaper of general circulation in the city or local area (or areas) where the Licensee is located (or is to be located and conduct operations if the proposed transfer is approved), and a copy thereof shall be furnished to SBA within 10 days after such publication.

(h) Standards governing SBA approval:

(1) SBA may, as a condition of granting approval of a proposed transfer of control, require an increase in Licensee's capitalization pursuant to section 302(a) of the Act.

(2) SBA may condition its approval on the assumption in writing by the new owners of contractual liability for a Licensee's indebtedness to SBA in the event of their noncompliance with the prior approval requirements of paragraph (a) or (b) of this section. SBA may also condition its approval on other requirements deemed necessary.

(3) SBA approval shall be contingent upon full disclosure by Licensee, and other parties concerned including information identifying the real parties in interest, describing the source of the funds used to effect the transaction, and setting forth such other data as SBA may request concerning the facts, events and circumstances involved.

(i) Reporting transactions involving possible transfer of control: The Licensee shall, upon obtaining knowledge thereof, promptly report to SBA the relevant facts pertaining to any transaction or event which affords reasonable grounds for belief that a transfer of control over such Licensee is involved or is likely to occur as a result thereof. If there is any doubt as to whether the nature or extent of a particular transaction or event is such as to involve or result in a change of control, such doubt shall be resolved in favor of reporting the facts to SBA.

§ 107.702 Common control.

A Licensee shall not have an officer or a director who at the same time is either an officer or director of any other Licensee (except a common manager approved in advance by SBA in writing), or who at the same time is an officer or director of any person which directly or

indirectly controls, or is controlled by, or is under common control with, another Licensee, nor shall 10 or more percent of the stock of any Licensee be owned or controlled, directly or indirectly, by an officer or director of, or by any party owning or controlling, directly or indirectly, 10 or more percent of the stock of another Licensee.

§ 107.703 Pledge of Licensee's shares.

Whenever 10 or more percent of a Licensee's stock is pledged or hypothecated by any person (or group of two or more persons acting in concert) as collateral for an indebtedness, and such pledge or hypothecation does not involve any transfer for which prior approval is required under § 107.701, written notice setting forth the terms of such transaction shall be furnished to SBA by the person (or persons) making such pledge or hypothecation within 5 calendar days from the date of the pledge or hypothecation.

LAWFUL OPERATIONS

§ 107.801 Amendments to Act and regulations.

A Licensee shall be subject to all existing and future provisions of the Act and regulations issued thereunder.

§ 107.802 Other laws.

Each Licensee shall comply with all applicable State or Federal law affecting its operation.

§ 107.803 Operations under Act.

A Licensee shall engage in and conduct only the activities set forth in and contemplated under the Act and shall not engage in or conduct any other activities.

§ 107.804 Identification as SBIC.

Any written communication made by or at the behest of a Licensee, shall identify that Licensee as "a Federal Licensee under the Small Business Investment Act of 1958."

§ 107.805 Postlicensing issuance of securities.

A Licensee may issue any of its securities, including stock options to management and employees, for (a) cash, (b) direct obligations of, or obligations guaranteed as to principal and interest by, the United States, (c) securities of which it is the issuer, in connection with a reclassification approved by SBA, (d) services previously rendered to the Licensee not to exceed fair value thereof, (e) physical assets to be currently employed in the operation of the Licensee at fair market value thereof, (f) as a dividend, and (g) in connection with a merger, consolidation, or reorganization approved by SBA: *Provided, however,* That any shares of stock issued as part of Licensee's minimum capital pursuant to § 107.-101(e) must be paid for in cash or securities permitted by the last sentence of section 308(b) of the Act.

§ 107.806 Retention of loans and investments.

A Licensee may retain its investment in a concern which qualified as a small business concern at the time of Licensee's initial financing but which subsequently became large. Securities of a large business received by a Licensee in connection with the merger, consolidation, or affiliation of a portfolio concern with such large business may be retained as long as continued ownership does not interfere with the Licensee's ability to maintain on hand funds in adequate supply for the financing of small business concerns. The Licensee may, however, in any event retain such securities until it has fully recovered the amount of its original investment plus a reasonable return thereon. Additional financing may be provided only to the extent necessary (a) to honor a commitment made while the concern still qualified as a small business concern or (b) to protect Licensee's original investment.

§ 107.807 Purchase of securities from another Licensee.

A Licensee may exchange with or purchase for cash from another Licensee, without recourse against the seller (except for such liability as may result from the falsity of representations or warranties as to matters of fact), portfolio securities (or any interest therein) acquired from small business concerns, by such Licensee or any other Licensee: *Provided, however,* That a Licensee shall not have invested at any one time more than one-third of its total assets in such securities of small business concerns through such exchanges or purchases.

§ 107.808 Idle funds.

Idle funds of a Licensee not employed in current financing of small business concerns and not invested in accordance with the last sentence of section 308(b) of the Act shall, without delay, be placed on demand deposit, or in Time Certificates of Deposit maturing not later than 1 year after issuance, in any bank or banks which are members of the Federal Deposit Insurance Corporation: *Provided, however,* That a Licensee may maintain an imprest petty cash fund in an amount not to exceed $500 at any one time.

§ 107.809 Investment adviser.

(a) *General.* A Licensee may contract in writing with an individual or non-Licensee concern to serve on a continuing basis as its investment adviser. Services performed shall be advisory only and shall not include the actual performance of management or operating activities of the Licensee. The Licensee shall, on or before the effective date thereof, furnish SBA with a copy of such contract. Where the Licensee is indebted to SBA, SBA reserves the right to approve the compensation of the investment adviser.

(b) *Common investment adviser.* Two or more Licensees may, with prior SBA approval, contract in writing with an individual or non-Licensee concern to serve on a continuing basis as their common investment adviser.

(c) *Exempt contracts.* Contracts for appraisal, custodial, collection, bookkeeping, accounting, and legal services shall not be considered advisory services for the purposes of this section.

§ 107.810 Assets acquired in liquidation.

Where property is acquired by a Licensee in full or partial satisfaction of an obligation of a portfolio concern, Licensee may incur reasonably necessary expenditures for the care and preservation of such property: *Provided, however,* That except as specifically permitted in writing by SBA, such expenditures (other than ordinary and necessary expenses for the maintenance of such assets) plus Licensee's funds attributable to such assets in liquidation shall not exceed an amount equivalent to Licensee's investment limit under § 107.301(c). Licensee shall take steps to dispose of assets in liquidation within a reasonable period of time.

§ 107.811 Additional investment by bank.

A bank which on January 9, 1968, holds fifty (50%) percent or more of any class of equity securities issued by a Licensee and having actual or potential voting rights, may, pursuant to section 302(b) of the Act, make further investments in such Licensee only if such investments would not increase its percentage holdings of such securities. Such capital increases shall be subject to SBA post-approval under § 107.1105.

RESTRICTED ACTIVITIES

§ 107.901 Control of small business concern.

(a) General: The Act does not contemplate that Licensees shall operate business enterprises or function as holding companies exercising control over such enterprises. Accordingly, neither a Licensee, nor a Licensee and its Associates, nor two or more Licensees may, except as hereinafter set forth, assume control over a small business concern pursuant to management agreements, voting trusts, majority representation on the board of directors, or otherwise.

(b) Presumption of control: Control over a small business concern will be presumed to exist whenever a Licensee, or a Licensee and its Associates or two or more Licensees acting in concert, own, hold, or control, directly or indirectly, voting securities equivalent to (1) 50 or more percent of the outstanding voting securities, if the voting securities of such concern are held by less than 50 shareholders; (2) 25 or more percent of the outstanding voting securities, if the voting securities of such concern are held by 50 or more shareholders, or (3) a block of stock of 20 or more percent of the outstanding voting securities which is as large as or larger than, any other outstanding block of stock. This presumption may be rebutted by the submission of appropriate evidence satisfactory to SBA.

(c) Temporary control permitted: A Licensee may acquire temporary control over a small business concern in connection with financing supplied to it

only where assumption of control is reasonably necessary for the protection of Licensee's investment.

(d) Plan to relinquish or divest control: A Licensee shall not assume control over a small business concern pursuant to paragraph (c) of this section unless it has negotiated and has entered into a fair and reasonable written plan at the time of financing, as a contractual obligation on its part enforceable by the small concern or its shareholders providing for relinquishment of control within a reasonable period of time not exceeding 7 years. Such plan shall contain provisions expressly stating that it is subject to SBA approval under this section and that the parties consider the plan to be fair and reasonable. The plan shall be filed with SBA not later than thirty (30) days after acquisition of control and shall be subject to SBA's postapproval as a condition for the continuance of the License. The plan shall be deemed approved unless Licensee is notified to the contrary by SBA within ninety (90) days after its receipt by SBA. Where the plan appears inadequate or unreasonable, SBA may notify and afford the Licensee and other parties concerned an opportunity to submit evidence as to whether renegotiation of the divestiture plan should be required. SBA approval shall be contingent upon full disclosure of all relevant facts and shall be subject to such conditions as SBA may determine are appropriate.

(e) The Licensee shall report to SBA in its annual financial report (SBA Form No. 468) a statement (in triplicate) setting forth current prospects for the implementation of the divestiture plan, and additional factors, if any, affecting the status or feasibility of relinquishing control.

(f) Subsequent events affecting plan: Where changed circumstances indicate that a workable arrangement no longer exists, SBA may, on its own initiative or upon application by the Licensee or other interested person, notify and afford the Licensee and other parties concerned an opportunity to submit evidence as to whether renegotiation of the divestiture plan should be required.

(g) Enforcement actions: (1) Divestiture plans entered into pursuant to this section shall not adversely affect or interfere with enforcement by the Licensee of its legal rights against a concern which has defaulted on its obligations to the Licensee and shall no longer continue in effect as a binding obligation on Licensee's part in the event of such enforcement action. (2) If the Licensee acquires control of the small business concern as the result of enforcement action taken, the Licensee shall immediately notify SBA and shall take steps to divest itself of control within a reasonable period of time pursuant to a plan approved in writing by SBA. In connection therewith, the Licensee shall be free to negotiate with any appropriate person or entity necessary to accomplish relinquishment of control.

(h) Licensees with existing plans: Licensees which have control of a small business concern on the effective date of this section, shall bring their plans for divestiture of control into compliance with this section not later than March 31, 1968: *Provided, however,* That the plan shall provide for relinquishment of such control within a reasonable period of time, but in no event later than March 31, 1975. Such plans shall be filed with SBA not later than April 30, 1968, and will be subject to SBA approval in accordance with the provisions of this section.

(i) Additional financing: Whenever a Licensee assumes control of a small concern, and later provides additional financing to it, the Licensee shall within thirty (30) days resubmit its divestiture plan (amended if necessary or appropriate) for SBA review and approval in accordance with the provisions of this section.

§ 107.902 Voluntary capital decrease.

A Licensee shall not voluntarily reduce its paid-in capital and paid-in surplus without prior written SBA approval. A Licensee may not purchase and hold more than 2 percent of any class of its stock without prior written SBA approval.

§ 107.903 Mergers, consolidations, and reorganizations.

Subject to the prior written approval of SBA, a Licensee may participate as a party to a statutory or other type of merger, consolidation, or reorganization with another Licensee or non-Licensee company where the resultant company will qualify as a Licensee. SBA's approval may be conditioned on such reasonable terms and conditions as it determines appropriate.

PROHIBITIONS

§ 107.1001 Prohibited uses of funds.

No funds may be provided by Licensee for:

(a) *Relending, reinvesting, etc.* Relending or reinvesting by the small business concern, nor may funds be provided to a small business concern if the business activity of such concern involves directly ro indirectly the investing, lending, or other providing of funds to others in exchange for an equity interest or monetary obligation, purchase or discounting of debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Financing Licensees.* Use, directly or indirectly, to purchase stock in or otherwise to provide capital for a Licensee, or to repay an indebtedness to accomplish such purpose.

(c) *Investments in unimproved real estate.* The acquisition, or payment of obligations relating to the prior acquisition, by a small business concern of land or improved real estate to be held, without prompt and substantial improvement or development, for resale or leasing to others. Improvement or development shall, for the purposes of this paragraph, be deemed prompt and substantial if (1) an amount equivalent to 50 or more percent of the financing supplied or committed by Licensee is used for land improvement, new construction, renovation, or other types of improvement or development, and (2) such improvement or development is undertaken within one (1) year from date of acquisition or date of Licensee's financing, whichever is later.

(d) *Purposes contrary to the public interest.* Purposes contrary to the public interest, including but not limited to gambling enterprises and activities, and any purpose which would encourage monopoly or be inconsistent with accepted standards of free competitive enterprise.

(e) *Foreign investment.* Use outside the United States: *Provided, however,* That a Licensee may provide funds to a small business concern which is subject to state or federal jurisdiction, (1) for use in the domestic production of products for distribution abroad, or to acquire abroad materials for such operation or (2) for use in its branch operations abroad or for transfer to its controlled foreign subsidiary; so long as the major portion of the assets and activities of such concern, after funds are so employed, remains within the territorial jurisdiction of the States.

(f) *Passive businesses.* Any person that is not engaged in a business operation conducted as a regular and continuous activity.

(g) *Licensee associated supplier.* A small business concern which purchases goods or services from a supplier; which supplier is an Associate of the Licensee, if 50 percent or more of the funds (or funds of the small business concern released by such financing) are used by the concern to purchase goods or services from such supplier.

(h) *Alcoholic beverages.* Enterprises which derive a substantial portion of their net sales from the sale of alcoholic beverages, where such funds represent proceeds of loans obtained from SBA. Accordingly, within thirty (30) days after the disbursement of any loan funds to Licensee, and thereafter during the period in which any part of such loan, remains unpaid, the Licensee shall maintain assets consisting of cash, eligible Government obligations, and portfolio investments and loans involving enterprises which do not derive a substantial portion of their net sales from the sale of alcoholic beverages (exclusive of all investments and loans already in the Licensee's portfolio at the time that the proceeds of such loans were disbursed), equal in face value to no less than the unpaid principal of such loan.

(i) *Agriculture.* Concerns engaged solely or primarily in the production of agricultural commodities.

§ 107.1002 Capital impairment.

(a) Each Licensee shall maintain at all times an unimpaired capital. An impairment shall be deemed to exist when the retained earnings deficit exceeds fifty (50%) percent of the private paid-in capital and paid-in surplus. Treasury stock shall not be considered as part of private paid-in capital and paid-in surplus.

(b) A debtor Licensee shall promptly inform SBA when its retained earnings deficit exceeds thirty-five (35) percent

of its combined paid-in capital and paid-in surplus.

(c) For capital impairment purposes, gains may be recognized by SBA only to the extent permitted in Addendum II (Realization and Use of Income and Gains) to SBA's Audit and Examination Guide (Revised Jan. 9, 1968) printed in Appendix 1 as part of the regulations of this part.

§ 107.1003 Inactive Licensees.

(a) The Act contemplates that a Licensee shall conduct active operations to meet the needs for financing of small business concerns in its area. Accordingly, inactivity on the part of a Licensee constitutes a violation of these regulations.

(b) A Licensee which on March 31 of any year has more than twenty-five (25) percent of its assets in Idle Funds (section 308(b) of the Act and § 107.808) shall be presumed inactive if it has not, during the past 12-month period, provided new or additional financing aggregating at least twenty-five (25) percent of an average of the amount of its said Idle Funds on such March 31 and on the immediately preceding September 30. It shall promptly file with SBA a written report setting forth the reasons for its inactivity. The foregoing presumption may be rebutted by the submission of appropriate written evidence satisfactory to SBA.

§ 107.1004 Conflicts of interest.

(a) *General.* Self-dealing to the prejudice of a small business concern, or of a Licensee or its shareholders, or of SBA, is prohibited.

(b) *Prohibitions.* Except where a written exemption may be granted by SBA in special instances in furtherance of the purposes of the Act—

(1) A Licensee shall not, directly or indirectly, provide financing to any of its Associates.

(2) A Licensee shall not, directly or indirectly, provide financing to an Associate of another Licensee if an Associate of the first Licensee receives, has received, or is about to receive (including receipt pursuant to any understanding, agreement, or cross-dealing, reciprocal or circular arrangement) any direct or indirect financing or a commitment for financing from such other Licensee or a third Licensee.

(3) No Licensee or any of its Associates shall directly or indirectly borrow money from (i) a concern financed by such Licensee or (ii) an officer, director, or owner of 10 or more percent equity interest in such concern, or a close relative of such officer, director, or equity owner.

(4) No Licensee shall directly or indirectly provide financing to a small business concern if the financing is used to provide funds to discharge or to free other funds for use in discharging an obligation of such concern to an Associate of the Licensee.

(5) No Licensee shall directly or indirectly provide financing to a small business concern, except as permitted by § 107.1001(g), if the financing is used to provide funds or to free other funds for use in purchasing property from an Associate of the Licensee.

(6) Where a Licensee provides financing to a small business concern which also receives financing from an Associate of such Licensee within a period of 1 year prior or subsequent thereto, the terms of Licensee's financing shall not be less favorable to the Licensee than those applicable to the financing supplied by its Associate. Licensee shall retain written evidence of such financing by the Licensee and its Associate as part of its records available for examination by SBA.

(7) Subparagraphs (4) and (6) of this paragraph shall not be applicable to transactions by Associates in the normal course of business involving lines of credit or short-term financing.

(c) *Fees or other compensation.* No Associate of a Licensee shall receive, directly or indirectly, from a small business concern any fees or compensation in connection with financing supplied by such Licensee, or any money or thing of value for procuring, attempting to procure, or influencing Licensee's action with respect thereto, except only for bona fide services performed by him at the request of such concern and paid in the manner hereinafter set forth. A reasonable sum for necessary incidental services and costs, including such items as title examination, appraisal, credit report, survey, closing fees and expenses, may be collected by the Licensee and paid to an Associate of the Licensee for services actually rendered by him at the request of the small concern. Such sum shall be approved by the Licensee, and written evidence of the transaction shall be retained as part of Licensee's records available for examination by SBA.

(d) *Public notice.* Prior to an exemption being granted by SBA under paragraph (b) of this section, the Licensee shall publish in a newspaper of general circulation in the locality most directly affected by the transaction, notice thereof as specified by SBA and shall furnish a copy to SBA within 10 days after publication.

(e) *1940 Act companies.* A 1940 Act company which has been granted an exemption by the Securities and Exchange Commission from applicable provisions of said Act and/or implementing rules and regulations with regard to a transaction which is also subject to paragraph (b) of this section, shall be exempt from the provisions thereof: *Provided, however,* That such Licensee shall inform SBA of the exemption granted by the Commission and shall cause prompt public notice thereof, in form specified by SBA, to be published in a newspaper of general circulation as set forth in paragraph (d) of this section, and shall furnish SBA with a copy of such notice within 10 days after publication.

(f) *Protection of investment.* Nothing herein contained is intended to preclude a Licensee from permitting any of its Associates, an employee, or representative from serving as an officer, director, or in any other capacity in the management of a small business concern for the purpose of protecting its investment in or loan to such concern: *Provided, however,* That the person so designated has no other direct or indirect financial interest in the portfolio concern and has not served as an officer or director or in any other capacity in the management of such concern for more than 30 days prior to such financing.

§ 107.1005 Sale of portfolio securities to Licensee's Associates or to competitors of portfolio concern.

(a) Except where a written exemption may be granted by SBA in special instances, a Licensee shall not dispose of its portfolio securities to any of its Associates. As a prerequisite to the granting of such exemption, the Licensee must demonstrate that the terms of the proposed sale are no less favorable to it than are obtainable elsewhere.

(b) Except where specifically approved in writing by the portfolio small concern which is not controlled by the Licensee or where granted a prior written exemption by SBA, a Licensee shall not dispose of the portfolio securities of a concern to a competitor of such small concern. The relevant particulars of all sales by Licensees of portfolio securities to competitors of the portfolio small concern shall be promptly reported to SBA.

§ 107.1006 Excess real estate investments of SBICs licensed prior to March 19, 1965.

Unless specific SBA approval has been granted authorizing a particular SBIC to maintain more than one-third of its portfolio in permitted real estate investments, SBICs licensed prior to March 19, 1965, whose real estate investments as of March 31, 1965, exceeded one-third of their portfolio, may retain such investments (not consummated in violation of provisions in effect when made) but shall not undertake further real estate investments until their portfolio is diversified to such extent that the real estate portion thereof constitutes less than one-third in dollar amount of the total portfolio. Thereafter, new real estate investments may be made, subject to the provisions of § 107.1001(c) as long as the one-third limitation is not exceeded.

§ 107.1007 No Government sponsorship.

No Licensee in issuing any security shall represent or imply in any manner that such security has been approved by the United States, or any agency or officer thereof, and a statement to such effect shall be included in any solicitations to investors.

§ 107.1008 Violations based on false filings and nonperformance of agreements with SBA.

The following shall constitute a violation of the regulations of this part:

(a) Nonperformance by a Licensee of any of the terms, conditions, or requirements of any debenture, loan agreement, note, or other written agreement with SBA.

(b) Any false statement knowingly made, or misrepresentation or failure to

state a material fact necessary in order to make the statement not misleading in the light of the circumstances under which the statement was made, in any document submitted by a Licensee to SBA pursuant to applicable provisions of the Act or regulations.

EXAMINATIONS, ACCOUNTS, RECORDS AND REPORTS

§ 107.1101 Examinations.

See section 310(b) of the Act.

§ 107.1102 Records and reports.

(a) Records: Each Licensee shall keep current financial records in accordance with generally accepted accounting principles, including the maintenance of books of account in accordance with the System of Account Classifications prescribed by SBA as set forth in Part 111 of this chapter. All such financial records and minutes of meetings of stockholders, directors, executive committees, or other officials; and all files containing pertinent documents and supporting material employed by a Licensee with respect to any and all transactions of the Licensee shall be kept at its principal place of business: *Provided, however,* That there shall be excepted from the foregoing all portfolio items held by a custodian for Licensee pursuant to written custodian agreement. All financial reports furnished to SBA by Licensees shall make full and complete disclosure of all matters relevant to the Act and and regulations.

(b) Preservation of records: Each Licensee shall maintain and preserve, for the periods hereinafter specified, such accounts, books, and other documents relating to its business as constitute the record forming the basis for financial statements required to be filed pursuant to paragraph (d) of this section, and of the independent public accountant's certificate relating thereto. Each Licensee shall:

(1) Preserve permanently, the first 2 years in an easily accessible place, (i) all general and subsidiary ledgers (or other records) reflecting all asset and valuation, liability, capital stock and surplus, income, and expense accounts; (ii) all general and special journals (or other records forming the basis for entries in such ledgers); and (iii) corporate charter, bylaws, Proposal to Operate, and all minute books, capital stock certificates or stubs, stock ledgers, and stock transfer registers;

(2) Preserve for a period of not less than 6 years following repayment, sale, or other final disposition of the related loan or investment (the first 2 years in an easily accessible place) all applications for financing, all size status declarations, all lending agreements, participation agreements, escrow agreements, financing instruments, capital stock certificates and warrants of small business concerns not surrendered or exercised, and all other documents and supporting material relating to such loan or investment, including correspondence, and

(3) Preserve for a period of not less than six (6) years all vouchers, checkbooks, bank statements, cancelled checks, cash reconciliations, ledger trial balances, memoranda, correspondence, and other documents forming the initial accounting data for entry in, or underlying records in support of, the records enumerated in subparagraph (1) of this paragraph.

(4) Notwithstanding the provisions of subparagraphs (1) through (3) of this paragraph, after any book, document, or other record has been preserved for three (3) years (or 3 years following final disposition of the related loan or investment, when applicable), a photograph or film thereof may be substituted therefor for the balance of the required time and the original destroyed.

(c) Reports to stockholders: At the time any financial report (including any prospectus, letter, or other publication with respect to the financial affairs or operations of the Licensee or any of its portfolio small business concerns) is furnished to investors and shareholders of a Licensee, such Licensee shall file with the Office of Investment, SBA, three (3) copies of such report.

(d) Financial reports to SBA:

(1) Each Licensee shall submit to SBA, at the end of the first 6-month period of each fiscal year, a report containing financial statements covering such 6-month period; at the end of each fiscal year a report containing financial statements for the fiscal year; and, when requested by SBA, interim financial reports. The fiscal year to which such reports shall relate shall be for SBA purposes the period beginning April 1 and ending March 31.

(2) The report as of the end of each fiscal year shall contain, or be accompanied, by, an independent public accountant's opinion on the financial statements for the fiscal year included therein, unless a different 12-month period to be covered by the annual audit is expressly given prior approval in writing by SBA. Such opinion shall be based on an audit of the accounts of the Licensee conducted in accordance with generally accepted auditing standards, and in accordance with the Audit and Examination Guide for Small Business Investment Companies prescribed by SBA, by an independent certified public accountant or an independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, selected or approved by SBA; or, in States or other political subdivisions of the United States which do not license public accountants, an independent public accountant of recognized standing with 10 or more years of public accounting experience, selected or approved by SBA prior to September 8, 1967, to audit the particular Licensee, who fulfills to SBA's satisfaction the requirements established by SBA.

(e) *Forms for financial reports:* The financial reports required by this section to be filed with SBA by Licensees shall be on the prescribed form constituting the Financial Report, SBA Form 468(9–67), which shall be filed in triplicate with the Office of Investment, SBA, Washington, D.C. 20416, on or before the last day of the month immediately following the close of the period covered by the report (in the case of an unaudited report), and on or before the last day of the third month following the close of the period covered by the report (in the case of an audited report).

(1) Licensees which are 1940 Act companies, as defined in § 107.3, should refer to the rules promulgated by the Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, for the requirements as to financial reports to be filed with SEC and the time allowed for filing.

(2) The Financial Report filed by each Licensee shall present fairly the financial position of the Licensee as of the close of the period covered by the report and the results of the Licensee's operations for such period, and shall be prepared in accordance with the Instructions for Preparation of the Financial Report, SBA Form 468 (9–67), which Instructions are identified as SBA Form 468A (1–68) and are printed in Appendix 2 as part of these regulations. Copies of SBA Form 468 (9–67) and of the Instructions may be obtained from SBA.

(f) Program evaluation reports:

(1) The Program Evaluation Report, SBA Form 684 (1–68), shall be prepared by each Licensee as of March 31 of every calendar year and filed in triplicate with SBA not later than June 30 of such year, to reflect all transactions involving Licensee's debt or equity financing of small business concerns which were outstanding at any time during the preceding 12-month period ending March 31. The report shall be prepared in accordance with Instructions for Preparation of the Program Evaluation Report, SBA Form 684A (1–68), which are printed in Appendix 3 as part of the regulations of this part. Copies of SBA Form 684 (1–68) and of the Instructions may be obtained from SBA.

(2) Each Licensee shall, as a condition of all financing agreements consummated or renegotiated with small business concerns after March 25, 1966, require such concerns to furnish to the Licensee all information needed by such Licensee for the preparation and filing of SBA Form 684.

(3) The provisions of Part 102 of this chapter prohibiting the disclosure of information contained in SBA's files, documents and records, apply to Program Evaluation Reports filed with SBA. Information submitted on SBA Form 684 (1–68) is for SBA's official use in the performance of its statutory responsibilities, and not for public disclosure. It will not be published or released, as a matter of public information, except in the form of statistical totals or summaries which will not divulge the identity of the Licensee or its portfolio of small business concerns.

(g) Litigation reports: Every Licensee which is a party in any capacity to litigation or other proceedings, including any action by the Licensee or a security holder thereof in a derivative capacity against an officer, director, investment

adviser or trustee of such Licensee for alleged breach of official duty, shall within 10 days of becoming a party thereto file a report with SBA describing the nature and status of the proceedings, the identity of and Licensee's relationship to other parties involved and, upon SBA's request, submit copies of the pleadings and other documents specified by it. In case such proceedings have been compromised or settled or final judgment has been entered on the merits, the Licensee shall furnish SBA with a statement of the terms of such settlement or compromise, or describing the final judgment entered.

(h) Whenever a Licensee files any report, application or document with the Securities and Exchange Commission, it shall concurrently provide SBA with a copy thereof.

(i) Other reports: In addition to the reports required elsewhere in this part, each Licensee shall, upon request by SBA, file with the Office of Investment, SBA, such other reports at such times and in such forms as SBA shall require.

§ 107.1103 Internal control.

(a) *General.* Each Licensee shall adopt a plan of organization and coordinate methods and measures designed to safeguard its assets and check the accuracy and reliability of its financial data. Effective control arrangements shall be established and maintained covering the Licensee's personnel, portfolio of investment securities, funds, and equipment.

(b) *Dual control.* With the exception provided for hereinafter, each Licensee shall maintain dual control over disbursement of funds and withdrawal of securities from safekeeping. Disbursements shall be made only by means of checks requiring the signatures of two or more officers of the Licensee, covered by the Licensee's fidelity bond, as drawers of such checks: *Provided, however,* A Licensee may maintain a separate imprest bank account to be drawn upon for the payment of operating expenses. Such imprest bank account shall have an aggregate balance not in excess of $25,000; and such account shall be reimbursed periodically through deposit therein of a check requiring dual signatures and drawn on Licensee's general funds bank account, covering disbursements made from the imprest bank account which have had the postapproval of the two signers of the reimbursement check. Checks drawn upon such imprest bank account in amounts of $1,000 or less may be signed by any authorized bonded officer of the Licensee. Two or more bonded officers or one bonded officer and one bonded employee of the Licensee shall be required to open safe deposit boxes or withdraw securities from safekeeping. Each Licensee shall furnish to each of its depository banks, custodians, and entities providing safe deposit boxes a certified copy of the resolution adopted by its board of directors placing the foregoing control procedures in effect.

§ 107.1104 Fidelity insurance.

(a) Each Licensee shall maintain a fidelity bond in the form and amount set forth by SBA in its Audit and Examination Guide for Small Business Investment Companies (Revised Jan. 9, 1968) which must be executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to sections 6–13 of Title 6 of the United States Code as an acceptable surety on Federal bonds. Each officer and employee who has control over or access to cash, securities or other property of the Licensee, shall be covered by such fidelity bond.

(b) Each Licensee, at least 30 days prior to making any request to the surety to terminate or cancel such bond, shall notify SBA in writing of its intent to terminate or cancel the bond. Each Licensee shall have as a part of its verified bond a rider or endorsement providing that the surety will notify SBA of its intent to cancel, or the expiration of, the fidelity bond at least 30 days in advance of the effective date of the termination. Each Licensee shall notify SBA immediately in writing of any claim for loss filed under the bond with the surety.

(c) The Audit and Examination Guide for Small Business Investment Companies (Revised Jan. 9, 1968) is printed in Appendix 1 as part of the regulations of this part.

§ 107.1105 Reporting postlicensing changes in activities not involving change of control or not otherwise subject to SBA prior approval.

(a) *Changes to be reported.* Any change of Licensee's name, address, operating area, charter, bylaws, increase in capitalization, financing plans, investment policy, officers, directors, or other changes made with regard to Licensee's affairs not covered by § 107.701 or for which prior approval is not specifically required by any other section of these regulations, shall be reported to SBA not later than thirty (30) days after the events described. All changes shall be subject to SBA postapproval as a condition for the continuance of the license.

(b) *SBA approval.* Reports and requests filed pursuant hereto shall be deemed approved unless Licensee is notified to the contrary by SBA within ninety (90) days after receipt of its request or report. SBA approval shall be contingent upon full disclosure of all relevant facts required by SBA and shall be subject to such conditions as SBA may determine are reasonable under the circumstances.

INVESTIGATIONS AND COMPLIANCE

§ 107.1201 Investigations.

See section 310(a) of the Act.

§ 107.1202 Enforcement actions.

See sections 308(d), 309, 311, 313, and 315(a) of the Act.

§ 107.1203 Exemption from civil penalties.

(a) Where it is impracticable for a Licensee to submit any report required by any regulation or written directive of the Administrator within the time limit prescribed therefor, the president or chief executive officer of such Licensee may, prior to the required filing date, present a written application to the Administration which (1) identifies such report; (2) certifies to the occurrence of extraordinary events which, according to such certification, make the submission of the report on the prescribed form, on or before the required filing date, impracticable due to no fault on the part of the Licensee; and (3) is accompanied by written evidence in support thereof. Such application shall be submitted as promptly as possible after the occurrence of such events. SBA in its discretion may exempt the Licensee, in whole or in part, from the civil penalty provisions of section 315(a) of the Act otherwise applicable, for such length of time and upon such conditions as SBA determines reasonable in the circumstances.

(b) For the purpose of this section, the term, "impracticable," refers to the existence of conditions which would make it physically impossible or otherwise unreasonable for a prudent businessman to prepare and file the required report on time. Such conditions include death or serious illness of Licensee's key personnel, or unavoidable loss or destruction of books, records or other data by fire, theft, or similar hazards beyond Licensee's control.

EXEMPTIONS

§ 107.1301 Exemptions.

A Licensee may file an application in writing with SBA to have a proposed action, which is subject to any procedural or substantive requirement, restriction, or prohibition specified under this part, exempted from applicable provisions thereof. SBA may approve such application and grant an exemption, conditionally or unconditionally, to the extent that such requirement, restriction, or prohibition is not prescribed by statute and exemption therefrom would not be contrary to the Act. Such application must be accompanied by supporting evidence which demonstrates to SBA's satisfaction that (a) the terms of the proposed action are fair and equitable; and (b) the exemption requested is reasonably calculated to advance the best interests of the SBIC program in a manner consonant with the policy objectives of the Act and regulations.

§ 107.1302 Savings clause.

The legality of transactions of a continuing nature consummated with third parties prior to January 9, 1968 (the effective date of Revision 4 of this part), pursuant to former provisions in effect at the time that the Licensee entered into such transactions, shall be governed by such former provisions. Nothing contained herein shall prevent SBA from taking or continuing appropriate enforcement action with respect to any transaction consummated prior to January 9, 1968, in violation of former provisions of this part which were applicable to such transaction at the time it was entered into.

INTERPRETATIONS

§ 107.1401 Capital structure of Licensees (interpreting section 302 of the Act).

Whenever capitalization of a Licensee is to consist of more than one class of stock, the voting rights and other rights and remedies may not be inequitable or discriminatory, and may not unduly concenttrate control or management of the Licensee through pyramiding, inequitable methods, or inequitable distribution. Full disclosure of all voting rights and other rights and remedies of all classes of stock must be made to all shareholders prior to their purchase of stock.

§ 107.1402 Agricultural enterprises (interpreting § 107.1001(i)).

(a) *Agricultural enterprises.* Section 107.1001(i) prohibits a Licensee from financing concerns engaged solely or primarily in the production of agricultural commodities. Such agricultural enterprises would include concerns producing field crops, livestock, and nursery crops.

(b) *Combinations.* A concern which is engaged in an agricultural enterprise as well as a business enterprise will be classified according to the predominant part of its operations, considering the time devoted to agriculture and business and the income derived from each.

§ 107.1403 Qualification of retained earnings as capital for SBA loans under section 303(b) of the Act (interpreting §§ 107.201 and 107.202).

(a) *Stock dividends.* A Licensee may increase its paid-in capital and paid-in surplus by capitalizing accumulated unappropriated retained earnings (i.e., up to but not exceeding retained earnings from operations and retained earnings from realized gains on investments) through the issuance of a stock dividend: *Provided, however,* That the stock dividend is issued in accordance with the following generally accepted principle, namely, the per share value of the stock dividend issued to capitalize accumulated unappropriated retained earnings shall be at a per share value representing the higher of fair value or the average paid-in capital per share existing at the time that the dividend is declared (par or stated value of capital stock issued plus paid-in surplus divided by the number of shares of capital stock issued).

(b) *Use as capital.* The amount by which paid-in capital and paid-in surplus is thus increased incident to the stock dividend may be properly included in the Licensee's total paid-in capital and paid-in surplus. Such total paid-in capital and paid-in surplus may be used for the purpose of determining the amount of debentures which SBA may purchase from such Licensee under §§ 107.201 and 107.202, pursuant to section 303(b) of the Act.

§ 107.1404 Excess section 303(b) funds resulting from merger of Licensees (interpreting §§ 107.201 and 107.202).

(a) *Excess 303 funds.* The aggregate amount of debentures which SBA may purchase from a Licensee may not exceed $7.5 million under section 303(b)(1), or $10 million under section 303(b)(2), of the Act. If a merger of two or more Licensees is consummated without revision of their constituent capital accounts, the resultant SBIC may hold excessive SBA funds. Consequently, the capital position of the Licensee would not be in conformity with the statutory directive.

(b) *Repayment.* The excessive debenture amount must be repaid to SBA within a reasonable period of time. The Licensee will be accorded a full opportunity to demonstrate by appropriate evidence what should be considered a reasonable period in which to effect repayment under the particular circumstances involved.

§ 107.1405 Affiliated concerns as single entity for purposes of SBIC financing (interpreting § 107.3, definition of small business concern, and § 107.301(c)(1)).

(a) Example: The majority stockholder of a parent corporation having six wholly owned subsidiaries also owns more than 50 percent of the voting stock of six other corporations. Separately and collectively, the 13 corporations in question satisfy SBA's size eligibility standards for a small concern. Each corporation conducts its operations in a different part of the United States and, except for concerted buying practices, each acts independently of the others. They submit loan applications to a Licensee having a $60,000 investment limit under § 107.301(c).

(b) By reason of their common ownership and control, the above-described corporations are "affiliated" concerns within the meaning of Part 121 of this chapter. Accordingly, they constitute a single small business concern for the purposes of § 107.301(c) and the total amount of Licensee's financing may not exceed its $60,000 loan and investment limit.

§ 107.1406 Maximum amortization (interpreting § 107.301(a)).

(a) *Example.* A Licensee has provided financing with 5-year maturities to various small concerns. These financings are to be amortized at the rate of 25 percent per year over the last 4 years of their terms. No amortization is required during the first year.

(b) *Interpretation.* Section 107.301(a) does not require amortization to be scheduled at an equal annual rate over the 5-year term of financing, but prohibits amortization to accumulate at a rate in excess of 20 percent per annum. Total amortization divided by the number of years elapsed may not, at any point of time, exceed 20 percent of principal. Thus, a Licensee may require amortization at a rate of 10 percent during the first year and 30 percent during the second year. On the other hand, it may not require amortization at a rate of 30 percent during the first year and 10 percent during the second year, except within the limit of the Special Discretionary Portfolio permitted under § 107.504(b)(1).

(c) *Application to example.* In the case presented in paragraph (a) of this section, amortization at 25 percent per year over the final 4 years of a 5-year financing would not result in "amortization during the first 5 years * * * at a rate exceeding an accumulated average of 20 percent of principal per year." (§ 107.301(a))

§ 107.1407 Short-term loans to protect Licensee's investment (interpreting § 107.301(d)).

(a) *Small business concern in default merges with other small concern.* A long-term investment made by a group of SBICs to a small business concern is in default. In order to avoid formal reorganization or bankruptcy proceedings, a merger has been proposed with a second small concern engaged in the same line of business. The survivor of this merger would be the second concern, which would assume the outstanding indebtedness of the original portfolio concern to the Licensee group. The survivor concern would meet the size eligibility standards for SBIC financing. The Licensee group proposes to make a short-term loan to the second concern for the purpose of reorganizing the debt structure of the original portfolio concern. This loan would initially be evidenced by demand notes of the second concern, to be subsequently replaced by 1-year debentures convertible into its common stock.

(b) *Short-term loan to survivor of merger.* The question presented is whether a demand loan by the Licensee group to the second concern would be authorized under § 107.301(d) as a short-term advance "made to a portfolio concern when reasonably necsesary to protect Licensee's existing long-term investment * * *."

(c) *Short-term loan to survivor permissible.* The short-term loan to the surviving concern may be regarded, under § 107.301(d), as a loan reasonably necessary to protect Licensees' investment in the original borrower concern.

§ 107.1408 SBIC financing for radio and TV stations (interpreting § 107.1001(d)).

As a matter of policy, SBA does not make loans to radio or television stations under section 7(a) of the Small Business Act. However, this policy is not applicable to the SBIC program. An SBIC is a privately owned and privately operated investment company. Loans and investments by such companies, unlike loans under section 7(a) of the Small Business Act, are not Government loans. Consequently, SBIC financing for radio and television stations would not be considered as "contrary to the public interest" under § 107.1001(d) of the regulations in this part.

§ 107.1409 Purchase of existing notes of portfolio concern (interpreting §§ 107.401 and 107.504).

(a) A Licensee may acquire an outstanding promissory note, debenture, or

other evidence of indebtedness of its portfolio concern when such action is necessary to protect Licensee's existing long-term investment in such concern.

(b) A Licensee may, at the request of its portfolio concern, disburse funds directly to a creditor of such concern in exchange for an assignment of its outstanding promissory note, debenture, or other evidence of indebtedness, where the funds represent an eligible loan for bona fide small business purposes. The funds advanced must represent eligible financing for a minimum term of 5 years. If the unexpired term of the outstanding debt instrument is less than 5 years, Licensee's purchase would be unauthorized, unless made within the limits of the Licensee's Special Discretionary Portfolio pursuant to § 107.504 as constituting a reasonably necessary part of the overall sound financing of the portfolio concern. Licensee shall keep on file a loan application or other document evidencing the portfolio concern's request for financing and a completed SBA Form 480, Size Status Declaration in accordance with § 107.301(e).

(c) The sum of the amounts paid by a Licensee for the acquisition of outstanding obligations of a portfolio concern and Licensee's existing long-term investment in such concern, may not exceed the 20 percent limit set forth in § 107.301(c).

§ 107.1410 Loans secured by real estate (interpreting § 107.3).

The fact that a Licensee's loan or investment may be secured by liens against real estate does not necessarily render it a "real estate investment" within the purview of § 107.3. The nature of the business activities engaged in by the recipient concern and the end-use made of the proceeds, are determinative. For example, Licensee's loan to a manufacturing concern, secured by a real estate mortgage, would not be classified as a real estate investment unless, due to changed circumstances after the date of such financing, the manufacturer's receipt of gross receipts from real estate is greater than that derived from manufacturing operations.

§ 107.1411 Equipment leasing concerns and rental service concerns (interpreting § 107.1001 (a) and (f)).

(a) *Equipment leasing concerns.* "Equipment leasing concerns", which are unable to meet the requirements of § 107.1001 (a) and (f), characteristically engage in the following transactions: Acquisition of special types of equipment or other personal property for a particular lessee; execution by the parties of a relatively long-term lease, with the lessee furnishing maintenance and repair; and provision for the lessee to obtain title at the end of the term. In many cases, useful life of the equipment or other leased chattel would ordinarily be exhausted over the period of the lease.

(b) *Rental service concerns.* "Rental service concerns" customarily maintain an inventory of equipment or other personal property continually rented and re-rented to different parties; their services are not substantially restricted to a single client concern; they possess physical facilities (or provide by contract) for maintenance and repair; rental is for a relatively short-term period, substantially less than the anticipated useful life of the equipment; and they ordinarily repossess the property at the conclusion of the term, with no provision for the client concern acquiring title, or at least none permitting acquisition at merely a nominal price.

(c) *SBIC financing permitted.* Licensees may not finance "equipment leasing concerns", referred to in paragraph (a) of this section. On the other hand, Licensees may invest in "rental service concerns" which meet the requirements of § 107.1001 (a) and (f).

APPENDIX 1—AUDIT AND EXAMINATION GUIDE FOR SMALL BUSINESS INVESTMENT COMPANIES

[Revised January 9, 1968]

FOREWORD

The Small Business Investment Act of 1958, as amended, expresses the declared policy of the Congress and purpose of the Act to improve and stimulate the national economy, and particularly the small business segment thereof, by establishing a program to stimulate and add to the flow of private equity capital and long-term loan funds which small business concerns need to finance their operations and assist in their growth, expansion, and modernization, and which are not available in the amounts required: *"Provided, however,* That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources."

The Small Business Administration, in carrying out this policy, requests the cooperation of independent public accountants engaged in the practice of public accounting to participate in their own localities in the audit (financial examination) program for small business investment companies. It is desired that the audits of such companies performed by independent public accountants selected by the individual companies will be conducted with the uniformly high degree of competency which the profession has so long striven to maintain. Through the efficient, thorough, and economical performance of the audits, the best interests of the Licensees, the Small Business Administration, and the accounting profession will be served.

This Audit and Examination Guide for Small Business Investment Companies was initially prepared by the Small Business Administration with the advice of a committee of independent certified public accountants. It has been revised primarily to take account of amendments of the Small Business Investment Act and of the regulations governing small business investment companies. Any inquiries or comments relating to the audit (financial examination) of small business investment companies should be directed to the Office of Chief Accountant, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

GENERAL CONSIDERATIONS

The Small Business Administration, under authority granted by the Small Business Investment Act of 1958, as amended, requires small business investment companies licensed by SBA under the Act to have an audit (financial examination) made of their accounts and records annually by independent public accountants selected or approved by SBA. SBA requires that the engagement cover a "financial examination" type of audit described hereinafter. The annual audit shall be performed as of the close of each Licensee's approved fiscal year for SBA purposes, ending March 31, unless prior written approval of SBA has been obtained for a different 12-month period to be covered by such audit. Three copies of the annual audit report should be submitted to SBA as soon as practicable after completion and no later than the last day of the third month following the close of the period covered by the audit.

Any public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, who is truly independent and who is duly authorized to practice as a public accountant, and is in good standing under the laws of the State or other comparable authority in which so authorized, may be considered qualified to render an opinion as an independent public accountant on behalf of an SBIC whose principal office is located in such State or authority. Also considered to be similarly qualified to audit certain Licensees in States or other political subdivisions of the United States which do not license public accountants are those independent public accountants of recognized standing with 10 or more years of public accounting experience, selected or approved by SBA prior to September 8, 1967, to audit the particular Licensees, provided such public accountants fulfill to SBA's satisfaction the requirements established by SBA.

The Small Business Administration will not recognize any public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any small business investment company with which he has, or had during the period covered by the audit (financial examination), any direct financial interest or any material indirect financial interest; or with which he is, or was during such period, connected as a promoter, underwriter, voting trustee, investment adviser, director, officer, or employee, or in the capacity of rendering bookkeeping services. In determining whether an accountant may in fact be not independent with respect to a particular SBIC, SBA will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and such SBIC or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with this Agency.

The responsibility for the selection of the independent public accountant by the SBIC is vested in the board of directors. Any accountant qualifying as an independent public accountant, as explained above, may be considered as having SBA approval to perform the annual audit (financial examination) upon selection by the board, and the filing with SBA by such accountant of an executed IPA Statement, I Form 56, certifying as to his qualification and independence, unless the SBIC is otherwise advised by SBA. It is strongly recommended that the board give thorough consideration each year to the matter of selecting the public accountant to perform that year's audit. The board under this policy selects an accountant with whom it agrees as to the engagement and basis of compensation. The SBIC then furnishes notification of the board's selection to the Office of Chief Accountant, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. Notification to SBA is not necessary when the same accountant or accountants are retained for a succeeding year.

This guide has been prepared, and made a part of the regulations, to inform Licensees under the Small Business Investment Act of 1958, as amended, and independent public accountants engaged by them as to SBA's minimum requirements concerning

fidelity bonds, valuation of portfolio assets, and audits (financial examinations) of SBICs. It is not intended to be a complete manual of audit (financial examination) procedure, nor is it intended to supplant the accountant's judgment as to any additional work required to meet generally accepted auditing standards and to render adequate and appropriate reports. Through use of this guide by independent public accountants the Administration expects audits (financial examinations) of uniformly high quality to be made of all small business investment companies licensed by SBA.

The procedures set forth herein apply generally to a type of audit technically termed a "financial examination."

A financial examination includes: (1) Review of the system of internal control and of the accounting principles followed; (2) independent sampling (through inspection, correspondence, etc.) to ascertain the existence of assets; (3) application of audit tests to determine that all liabilities are reflected in the balance sheet in actual or approximate amounts; (4) review and testing of the income and expense accounts; and (5) review of the accounting records, with application of appropriate testing procedures, to determine the authenticity and general reliability of the financial statements prepared from the accounts.

SBA expects the review and testing of operating transactions during the audit to be of sufficient scope and intensity to assure disclosure and correction of any erroneous recording or classification of income and expense items in the SBIC's books that would materially distort the statement of income and expense.

SBA has prescribed a system of account classifications which is required to be used by licensed small business investment companies. The Agency requires uniform reporting and contemplates that generally accepted auditing standards will be maintained. The attainment of accounting and reporting uniformity and the maintenance of auditing standards will provide reliable information for use by SBIC management and SBA. Accountants engaged by SBICs should become familiar with:

Small Business Investment Act of 1958, as amended.
Regulations governing small business investment companies issued pursuant to the Small Business Investment Act of 1958, as amended.
System of Account Classifications for Small Business Investment Companies (Part 111, SBA Rules and Regulations).
Financial Report, SBA Form 468.

REPORT ON AUDIT (FINANCIAL EXAMINATION)

General

It is expected that audit adjustments will be recorded in the SBIC's records before completion of the audit report, so that financial statements included in the audit report will agree with the books as adjusted to the balance sheet date, giving consideration to reclassifications of account balances for report purposes. Adjustments reflected in the audited statements, but not agreed to by the SBIC and not recorded on its books, must be commented upon in the report. Also, in case there are no audit adjustments, the accountant should include in his comments a statement as to why adjustments were not necessary.

The accountant should render a long-form audit report including the narrative comments, notes, and qualifications necessary to disclose the SBIC's financial position at the close of the period under audit and results of operations for the same period. The financial statements included in the audit report should be those constituting the Financial Report, SBA Form 468, and should be prepared on such form. The accountant's opinion in the audit report shall be made to apply to the specific financial statements and schedules constituting SBA Form 468 included in such audit report.

If, for some purpose considered sufficiently important, the SBIC prefers to have the detailed SBA Form 468, in its entirety, submitted separately from the bound audit report, it may have the accountant prepare an audit report containing condensed financial statements consisting as a minimum of a statement of financial condition, a statement of surplus reconciliations, a statement of income and expense, and a statement of realized gain or loss on investments, all presented in a manner conforming to the presentation of accounts in SBA Form 468. The Financial Report, SBA Form 468, shall (if this optional audit report is prepared) be made to accompany the audit report. This optional long-form audit report should include the narrative comments, notes, and qualifications necessary to disclose the SBIC's financial position at the close of the period under audit and results of operations for the same period. The accountant's opinion in this optional report shall be made to apply, by reference, both to the financial statements in such report and to the financial statements and schedules comprising the accompanying Financial Report, SBA Form 468.

It is a recognized practice for audit reports used by banks and government lending agencies, such as SBA, which provide financial assistance to businesses being audited, to include a concise but reasonably comprehensive description of the work done in addition to the usual information as to scope. Accordingly, the audit narrative comments should include not only a summation of the findings on each significant balance sheet account, and on the results of operations, but also information as to the procedures employed in the audit of each significant account, presented individually or in a group.

The accountant should, when possible, provide an unqualified opinion. In cases in which he considers it necessary to qualify or disclaim an opinion, the accountant should cite, when applicable, the specific loans and investments causing such qualification or disclaimer, and also state the specific factors involved which led to the qualification or disclaimer.

SBA expects the accountant's comments to be precise and meaningful. Comments stereotyped as to expression on the basis of previous reports are to be avoided.

The agreement between the SBIC and the accountant with respect to the audit (financial examination) should provide that any information in the working papers will be made available upon request to the SBIC or to SBA.

Three copies of the audit report, with SBA Form 468 properly executed by the appropriate officers of the SBIC, shall be submitted to SBA by the SBIC or by the accountant on behalf and with the approval of the SBIC. Any matters for SBA attention not included in the audit report are to be set forth in an accompanying letter.

A copy of all adjusting journal entries recommended by the accountant should be attached to the inside of the back cover of each copy of the audit report submitted to SBA. Also attached to the inside of the back cover of each copy of the audit report should be a copy of any transmittal letter, special report, summary of recommendations, or similar communication furnished to the SBIC.

All SBIC audit reports submitted to SBA by accountants should be addressed to: Office of Chief Accountant, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

Accountant's Certificate

The accountant's certificate shall be dated, shall be signed manually, and shall identify without detailed enumeration the financial statements covered by the certificate. The accountant's certificate shall state whether the audit was made in accordance with generally accepted auditing standards; and shall designate any auditing procedures generally recognized as normal, or deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Nothing herein shall be construed to imply authority for the omission of any procedure which independent public accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinion required as stated hereinafter. The accountant's certificate shall state clearly: (a) The opinion of the accountant in respect of the accounting principles and practices reflected in the financial statements and as to the fairness with which the financial statements present the financial position of the Licensee at the audit date and the results of its operations for the period; (b) the opinion of the accountant as to any material changes in accounting principles or practices or method of applying the accounting principles or practices, or adjustments of the accounts, which affect comparability of such financial statements with those of prior or future periods; and (c) the nature, of and the opinion of the accountant as to, any material differences between the accounting principles and practices reflected in the financial statements and those reflected in the accounts after the entry of adjustments for the period under review. Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

Procedure for Reporting Irregularities

SBA is vitally concerned when any defalcation or other irregularity is discovered during the course of an audit. To meet its responsibilities SBA requires that the Office of Chief Accountant be *notified immediately* by the independent public accountant in the event any defalcation or other criminal violation is disclosed.

AUDIT OF ACCOUNTS AND REPORT OF AUDIT PROCEDURES AND FINDINGS

The audit (financial examination) referred to herein shall be conducted in accordance with generally accepted auditing standards and therefore shall include such tests of the accounting records and such other procedures as deemed necessary to enable the independent public accountant to render an opinion on the statements reported upon. Among the procedures to which particular attention should be given are the following:

Internal Control

It is expected that the independent public accountant will review the company's procedures and appraise the effectiveness of the internal control. The extent and nature of the testing and checking of certain accounts should be determined on the basis of this review and appraisal. It is important that the accountant set forth his observations on the effectiveness of internal control in the general comments section of his report, together with any suggestions he may have for improvement.

Each Licensee is required to establish and maintain effective control arrangements covering its personnel, portfolio of investment securities, funds, and equipment. Dual control represents a key feature of such arrangements.

Fidelity Bond

The independent public accountant should check the provisions of the SBIC's fidelity bond against the requirements of SBA as stated in Addendum I of this guide, and should comment in his report regarding the conformity of the bond to such requirements.

Minutes

The minutes of the board of directors' meetings for the period under review should be examined to note items pertinent to the audit, such as duly elected officers, persons authorized to sign bank checks and execute legal and financial documents (including requirement for dual control over disbursement of funds and withdrawal of securities from safekeeping), loans granted and equity securities purchased, sales of loans and equity securities, long-term financing from SBA or others provided for, capital stock authorized, stock options granted, dividends declared, and resolutions relating to the employment of personnel and basis of remuneration. In his report the accountant should state that he has reviewed the minutes, indicate whether they are up-to-date, and comment on any matters contained in the minutes which in his opinion are worthy of attention.

Cash

Cash on hand should be counted. Cash in banks should be reconciled with book balances and confirmed by correspondence. In addition to bank statements at balance sheet date of the audit, the independent public accountant should request and utilize cut-off statements as of a subsequent date to permit determination of the disposition of outstanding checks, deposits in transit, and other reconciling items.

U.S. Government Obligations, Insured Savings, and Time Deposits

Temporary investments made from the company's general cash funds in direct and/or fully guaranteed U.S. Government obligations should be verified by inspection and, when applicable, by confirmation from custodians. Verification should include ascertainment that proper interest coupons are attached to bearer bonds. The recorded cost or, in the case of U.S. Savings bonds, the current redemption value should be verified. The accountant should state whether registered bonds are in the name of the SBIC or endorsed so as to be transferable to the company, or are accompanied by powers of attorney.

Temporary investments of the company's general cash funds in savings institutions should be reconciled with book balances and confirmed by correspondence. Time certificates of deposit should be examined to verify the SBIC's ownership of time deposits and to ascertain correctness of the balances per books.

Notes and Accounts Receivable, and Allowance for Uncollectibles

Miscellaneous notes on hand should be examined and the details compared with the company's records. A representative number should be confirmed by correspondence with the makers.

Accounts receivable for services rendered participating companies, for commitment fees, for declared dividends and sharings in income, and for management consulting, investigation, appraisal, and related services rendered, as shown by subsidiary records, should be reconciled to control accounts. The same should be done with respect to receivables representing participating companies' portions of principal and accrued interest receivable from financed small business concerns.

Notes and accounts receivable, sales contracts, mortgages, and similar evidences of indebtedness to the SBIC arising from the sale of assets acquired in liquidation of loans and debt securities, as shown by subsidiary records, should be reconciled to the control accounts. Current and past-due accounts receivable of this type, as well as miscellaneous accounts receivable, should be confirmed as the independent public accountant may deem appropriate, considering the relative significance of such accounts in the financial statements. The accountant should review all notes, sales contracts, mortgages, and other documents evidencing amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities, and should confirm directly with the makers the unpaid balances of such of these obligations as he considers necessary. Sales contracts and mortgages should be examined to ascertain that such documents required to be recorded bear proper notation of recording.

The collectibility of all notes and accounts receivable should be estimated on the basis of the most reliable information the auditor can obtain. Such amounts due should be discussed with the executive officers of the company. Any contractual delinquency in payments to date should be given due consideration. Items considered uncollectible should be recommended for writeoff, and those of doubtful collectibility should be adequately provided for in the allowance for uncollectible notes and accounts receivable. If considered desirable, an adjusting entry to the allowance account should be recommended by the accountant for adoption by the SBIC. Comments concerning the adequacy of the allowance account should be included in the audit report.

Accrued Interest Receivable and Allowance for Uncollectibles

Determination should be made that interest receivable is currently and correctly accrued on the SBIC's records. This involves interest accrued on U.S. Government obligations, loans to and debt securities of small business concerns, notes receivable, sales contracts, and other interest-bearing amounts due from debtors.

The allowance for uncollectible interest receivable should be reviewed as to adequacy and commented upon in the report.

Due from Directors, Officers, and Employees

Advances made to directors, officers, and employees should be reviewed for proper authorization and recording, and should be commented upon as appropriate.

Funds in Escrow and Other Current Assets

Funds in escrow pending closing of financing for small business concerns should be confirmed. Miscellaneous current assets should be reviewed for authenticity and appropriateness of classification.

Loans, Debt Securities, Loans and Debt Securities Sold with Recourse, Allowances for Uncollectibles and Losses, and Unearned Discount, Fees, and Other Charges

The independent public accountant should review all notes, mortgages, and other obligation documents evidencing loans granted under section 305 of the Small Business Investment Act, as amended, and should confirm directly with the makers the amount of the unpaid balances. Debt securities of small business concerns, purchased by the SBIC under provisions of section 304 of the Act, as amended, should be subjected to a similar review and confirmation. Either type of financing instruments obtained from other SBICs through purchase or through exchange of portfolio securities should likewise be examined and confirmed with the issuers. All obligation documents should be checked for signatures, including proper witnessing and acknowledgment, and for stated interest rate and term. Loans and debt securities pledged should be confirmed by correspondence with the holders.

The System of Account Classifications provides for carrying loans and debt securities at their unpaid principal balances, including any related uncollected discounts, fees, or other charges. In the case of any such financings in which participations are sold to others, only the portion retained by the selling company is shown in the seller's books. Loans and debt securities are to be reported in the Statement of Financial Condition of SBA Form 468 on the same basis as recorded in the accounts.

Determination should be made that mortgages required to be recorded bear proper notation of such recording. The accountant should ascertain from such sources as the loan and debt security ledger cards or sheets, the collateral register, document files, minutes of board of directors' meetings, and statements of executive officers, what collateral documents should be on hand evidencing security for loans and debt securities, and should check for the presence of such collateral documents.

The accountant should inspect each participation agreement under which the company has purchased a participation interest in a loan or debt security, should inspect the documents evidencing such participation, and should request confirmation from sellers to the extent considered necessary. Similarly, amounts reflected in subsidiary records as participations of others in loans and debt securities of the company under audit should be reviewed in relation to the pertinent participation agreements and confirmed with the purchasers to the extent warranted.

The accounts of loans and debt securities sold with recourse should be checked to the records of such sales and to the advices received from the purchasers as to payments made by the financed small business concerns.

The independent public accountant should review the current financial statements of the concerns which are financed by the SBIC and provide comments on the findings thereof. When such financial statements are not available, the accountant shall so state in his report.

The board of directors of the SBIC has the responsibility of determining in good faith a realistic valuation for each specific loan and debt security, which shall be arrived at after consideration of all pertinent factors. Valuation techniques and standards for guidance of the board are set forth in SBA Policy and Procedural Release No. 2006, dated December 31, 1965. The independent public accountant should satisfy himself as to the reasonableness of the bases employed by the board of directors in making determinations of the value of loans and debt securities. No appreciation in value of debt securities is to be recorded in the books of account. The valuations as determined by the board of directors are to be shown in the memorandum column of the applicable schedule of the Financial Report, SBA Form 468, and taken into consideration in developing the data required for the memorandum item following the Statement of Financial Condition in such report.

The accountant should discuss all marginal loans and debt securities with the executive officers of the SBIC. Writeoffs should be recommended in instances in which the unpaid

balances of loans and debt securities are considered uncollectible. The allowance for uncollectible loans and the allowance for losses on debt securities should be reviewed as to adequacy and commented upon in the report. If considered desirable, adjusting entries to the allowance accounts should be recommended by the accountant for adoption by the SBIC.

Special attention should be given by the accountant to verification of all amounts of unearned discount, fees, and other charges shown as deducted from the unpaid principal balances of loans and debt securities.

Capital Stock of Small Business Concerns; Warrants, Options, and Other Stock Rights Acquired from SBCs; and Allowances for Losses

All capital stock of small business concerns in the possession of the SBIC should be verified by inspection of the stock certificates. Similar capital stock on the books which is not in the possesssion of the company should be confirmed by direct correspondence with those having possession thereof. Capital stock of small business concerns is to be recorded on the books of the SBIC at cost. In the case of any such financings in which participations are sold to others, only the portion retained by the selling company is shown in the seller's books.

The independent public accountant should review the cost determinations made with respect to warrants, options, or other stock rights carried on the books at a monetary value. Only the selling company's portion of such stock rights is shown in its books when participations in the stock rights are sold to others.

The accountant should inspect the agreement and other documents evidencing each participation purchased, and should request confirmation from sellers to the extent considered necessary. Similarly, amounts reflected in subsidiary records as participations of others in capital stock and warrants, options, or other stock rights acquired by the company under audit should be reviewed in relation to the pertinent participation agreements and confirmed with the purchasers to the extent warranted.

It is the responsibility of the SBIC's board of directors to determine in good faith a realistic valuation for each capital stock investment and for warrants, options, or other stock rights for which a separate cost has been determined. This valuation shall be arrived at after consideration of all pertinent factors. Valuation techniques and standards for guidance of the board are set forth in SBA Policy and Procedural Release No. 2006, dated December 31, 1965. The independent public accountant should satisfy himself as to the reasonableness of the bases employed by the board of directors in making the value determinations. No appreciation in the value of capital stock or stock rights investments is to be recorded in the books of account. The valuations of the stock and stock rights as determined by the board of directors are to be shown in the memorandum column of the applicable schedule of the Financial Report, SBA Form 468, and taken into consideration in developing the data required for the memorandum item following the Statement of Financial Condition in such report.

The financial position and earnings of the financed small business concerns are important factors in the board of director's determination of the real value of the stock and stock rights issued by such concerns. The current financial statements of the small business concerns should be reviewed and comments on the resultant findings should be given in the audit report. When such financial statements are not available, the accountant shall so state in his report. Any material decrease in value of capital stock or stock rights, as determined by the board of directors, that is not obviously of a transistory nature should be compensated for by an increase in the allowance for losses on capital stock of small business concerns, or in the allowance for losses on their warrants, options, and other stock rights, as appropriate. These allowance accounts should be reviewed as to adequacy by the accountant and commented upon in his report. An adjusting entry to effect any necessary increase should be recommended by the accountant for adoption by the company. Likewise, entries should be recommended to write off any established loss on capital stock of small business concerns or on stock rights of such concerns.

Venture Capital

Under the Small Business Investment Act of 1958, as amended, SBICs are entitled to borrow additional funds from SBA if they have a qualifying amount of combined paid-in capital and paid-in surplus and maintain a minimum percentage of total funds available for investment in small business concerns invested or committed in "venture capital," as defined in section 107.3 of the regulations. The independent public accountant, referring to the official definition of venture capital and reviewing the lending instruments and related documents, should determine that the total amount of venture capital as indicated in the Financial Report, SBA Form 468, is substantially correct.

Assets Acquired in Liquidation of Loans and Debt Securities, Accumulated Depreciation, Mortgages Payable, and Allowance for Losses

These assets may include a wide variety of things of value, as, for example, collateral notes receivable, accounts receivable, judgments, sheriffs' certificates, and various types of real and personal property. Property taken in liquidation should be recorded at an amount determined by the board of directors on the basis of bid-in price, agreed consideration, or fair appraised value, as deemed most suitable: *Provided*, That the net amount recorded shall not exceed the total amount of the related loan or equity security indebtedness involved. In the case of mortgaged real property acquired in liquidation of loans and debt securities, the property should be recorded at gross value as determined by the board of directors, reduced as necessary to bring the net recorded value within the above-stated limitation. The amount of the existing mortgage or mortgages on such property should be included among the SBIC's liabilities. The accountant should verify each asset through application of procedures generally accepted for audit of the particular class of assets involved. Board authorization for recording these assets at the amounts shown should be ascertained. The amount recorded will correctly represent only the selling company's portion of any such assets in which participations are sold to others.

It is the board of directors' responsibility to determine in good faith a realistic valuation for each security or other item of property comprising assets acquired through liquidation of loans and debt securities. Such valuation shall be arrived at after consideration of all pertinent factors. Valuation techniques and standards for guidance of the board are set forth in SBA policy and Procedural Release No. 2006, dated December 31, 1965. The independent public accountant should satisfy himself as to the reasonableness of the bases employed by the board in determining the values. No appreciation in the original recorded value of assets acquired in liquidation of loans and debt securities is to be recorded in the books of account. The valuations as determined by the board of directors are to be shown in the memorandum column of the applicable schedule of the Financial Report, SBA Form 468, and taken into consideration in developing the data required for the memorandum item following the Statement of Financial Condition in such report.

The accumulated depreciation on assets acquired in liquidation of loans and debt securities should be reviewed by the accountant to assure that it is not less in amount than a conservative estimate of the expired service life of such property while owned by the SBIC. Insurance coverage should be reviewed as to adequacy.

Such acquired assets should be discussed with the executive officers of the company. Writeoff should be recommended for items considered worthless. The allowance for losses on assets acquired in liquidation of loans and debt securities should be reviewed as to adequacy and commented upon in the report. If considered desirable, adjusting entries to the allowance account should be recommended by the accountant for adoption by the SBIC.

Corporate Premises Owned, Furniture and Equipment, and Accumulated Depreciation

The independent public accountant, during the first audit of the SBIC, should examine the documents showing title to the property owned as corporate premises. It should be ascertained that the land is carried at acquisition cost, plus the cost of subsequent benefit assessments and improvements (other than buildings and improvements related thereto), and that the charging of such additional costs to the land account has been proper. The building owned as a part of the corporate premises should be recorded at acquisition cost plus cost of subsequent improvements thereto. The basis for recorded cost should be verified and capital additions should be checked to ascertain that only properly capitalizable items have been added to book cost. Vouchers and invoices covering such additions should be examined. Retirements and sales should be reviewed to see that all transactions have been properly reflected in the accounts. Insurance coverage should be reviewed as to adequacy.

The accumulated depreciation on the building and related improvements owned as a part of the corporate premises should be reviewed to assure that it is not less in amount than a conservative estimate of the expired service life of such building and improvements.

On occasion, an SBIC may be found operating in the same or communicating office or building with a bank or other financial institution. Sometimes both institutions are managed by the same individuals and the same facilities may be used for transacting business. The accountant should satisfy himself that safeguards are maintained which effectively segregate the books, records, and assets of the separate institutions at all times.

The audit findings concerning corporate premises owned should be set forth in the report.

The accountant should ascertain that furniture and equipment, including automobiles, are recorded on the books at cost. Documents showing ownership of automobiles by the company should be inspected and invoices for all major additions to furniture and equipment during the audit period should be examined. Sales and tradeins of furniture and equipment should be tested to determine that they have been appropriately recorded. Insurance coverage should be reviewed as to adequacy.

The accumulated depreciation on furniture and equipment, including automobiles,

should be reviewed for adequacy.

The report should contain comments concerning unusual conditions, if any, found with respect to these assets.

Organization Costs

Legal fees, promotional expense, stock certificate costs, incorporation fees, taxes, and other charges which may comprise organization costs on the books should be audited for propriety as capital charges pending amortization or writeoff to the organization expense account. Following the first audit, the review of organization costs will ordinarily be concerned chiefly with a determination and evaluation of the basis for amortization and the consistency with which the planned elimination of this balance sheet item is being accomplished. The audit report comments on organization costs (at the first audit) should describe the components of this asset.

Other

Accounts relating to long-term notes receivable, leasehold improvements, supplies on hand, insurance prepayments, and other prepayments and deferred items should be reviewed. All significant items should be examined for propriety, for applicability to future periods, and for appropriateness of the basis for writeoff. Particular note should be taken of any amounts deferred as the result of improper accounting or failure to identify the correct purposes of the charges.

In reviewing insurance prepayments the independent public accountant should prepare for inclusion in his report a summary of insurance coverage.

Improvements to leased property used as the company's office quarters (if this situation exists) should be checked against invoices, contracts, and other supporting documents. Determination that all capitalized improvements are properly capitalizable should be made and the basis and accounting for writeoffs should be examined for appropriateness.

The audit report should contain adequate information on prepayments and deferred charges.

Miscellaneous assets of the company not included under other captions should be commented upon here, including recoverable amounts (exclusive of short-term loans (section 305) or equity financing (section 304)) advanced for the protection and preservation of the company's investments. Miscellaneous assets should be reviewed for validity and for propriety of their retention on the books.

Accounts Payable

Accounts payable for participating companies' portions of principal and accrued interest receivable from financed small business concerns, compensation for services rendered on participations purchased, for commitment fees on deferred participations by others, and for other values received, as shown by subsidiary records, should be verified and reconciled to control accounts. The accruals of compensation payable and commitment fees payable should be reviewed with reference to the related participation agreements. Unusually large amounts and a reasonable proportion of other amounts due on open account should be confirmed by correspondence with the creditors.

Other Current and Accrued Liabilities

Subsidiary records on other current and accrued liabilities, including those for interest, salaries, taxes, dividends, unapplied receipts, trust receipts, amounts due directors, officers, and employees (other than salaries), and other deferred credits, should be checked and reconciled with the control accounts. A certificate, signed by an executive officer of the company, should be obtained stating that all actual liabilities have been entered in the books and that all existing contingent liabilities have been reported to the auditor. The accountant should communicate with the SBIC's attorney to determine the existence of any claims in litigation or pending against the company for the purpose of establishing any contingent liability.

The accountant should (following upon the fact) state in the report that certificates were received from the executive officer and the attorney concerning the recording of actual liabilities and the existence of any claims in litigation or pending against the company.

The report should also present pertinent information concerning unusual current and accrued liabilities. Special attention and comment should be directed to any amounts due directors, officers, and employees, and to any contingent liabilities, including commitments and guarantees.

Funds Borrowed and Other Liabilities

Indebtedness to SBA should be reconciled to the current statements from the Small Business Administration. Direct confirmation from SBA is required and should be requested on the basis of a statement, submitted in triplicate to the Director, Office of Budget and Finance, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, showing the unpaid balances of principal and interest at the balance sheet date of the audit. Adequate identification of each obligation, using execution date and SBA loan symbols, should be given.

Debt to others than SBA for funds borrowed likewise should be confirmed by correspondence. Loan agreements, contracts, and mortgages, and minutes of board meetings pertaining thereto should be examined in relation to SBA financing and loans from others to determine whether there has been compliance with such of their terms as have direct bearing on the financial position as represented in the audited statements.

The other liabilities and deferred credits should be checked for validity. If these items are material in amount, appropriate comments thereon should be included in the report. Special attention and comment should be directed to any amounts due directors, officers, and employees, and to any contingent liabilities, including commitments and guarantees.

The independent public accountant should ascertain that the appropriate schedule of the Financial Report, SBA Form 468, reflects all commitments, guaranteed obligations, and other contingent liabilities, and that the total of all contingent liabilities is shown as a footnote at the bottom of page 2 of SBA Form 468.

Capital Stock and Surplus

Verification of capital stock should be carried out by examination of the stock records and the stock certificate books, or by direct confirmation from the registrar and transfer agent, if applicable. Cash records or other records showing the consideration received for capital stock should be reviewed in connection with capital stock transactions during the period. Authorizations of the board of directors and also the charter and bylaws should be referred to. Determination should be made as to the existence of stock options, warrants, rights, conversion privileges, sales of stock on special terms, or reservations of shares of stock for sale to particular groups or for options and other rights. It should also be determined that all such transactions have been appropriately recorded and set forth in the statement of financial condition, notes thereto, or schedules, as applicable. The independent public accountant should look for and disclose the existence of any arrearages in the payments on capital stock subscribed or in the payment of dividends on outstanding capital stock. Treasury stock transactions should be analyzed and determination made that appropriate accounting has been effected.

The audit report should contain thoroughly informative comments regarding capital stock transactions during the period.

Changes in the surplus accounts during the period should be reviewed for propriety of the accounting entries effecting the changes. Although all earnings for the year are ultimately transferred to a single retained earnings account, it should be determined that appropriate distinction has been made in classifying items in the Profit and Loss Summary and the Realized Gain and Loss Summary accounts as between (1) income and expense from operations and (2) realized gains and losses on investments. Paid-in surplus debits and credits must also be checked for appropriateness of classification.

Loans and Investments at Market or Fair Value

Review should be made of the valuation of loans and investments. The independent public accountant should determine and report whether the SBIC has followed the instructions for the memorandum item following the Statement of Financial Condition in SBA Form 468 in making the valuation. *It shall be understood that the accountant's opinion on the financial statements contained in SBA Form 468 does not extend to the valuation of loans and investments given in such memorandum item.*

Income and Expense and Gain and Loss Accounts

Appropriate tests should be made of income and expense and gain and loss accounts for the period under review. The tests should be sufficient, when combined with information obtained in other phases of the audit, to satisfy the accountant that transactions summarized in these accounts are genuine and have been properly authorized and accurately recorded.

The verification procedures applied to income and expense and gain and loss accounts should be based on the same testcheck principles as are applied to the balance sheet accounts. After examining representative transactions for the period or periods he has selected for testing, the accountant should scan the accounts and examine any entries which appear unusual. Special attention should be given to transactions contributing to the recorded gain or loss realized on sale of investments. In this connection, reference should be made to SBA requirements concerning the realization and use of income and gains, as set forth in Addendum II of this guide. The accountant should include in his comments information as to the latest year through which federal income tax returns of the SBIC have been audited by the Internal Revenue Service.

ADDENDUM I—FIDELITY BOND

1. NEED FOR BOND

Each Licensee shall obtain and maintain a fidelity bond which must be executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to sections 6–13 of Title 6 of the United States Code as an acceptable surety on Federal bonds. Each officer and employee who has control over or access to cash securities or other property of the Licensee shall be covered by such fidelity bond. The form of bond must meet the provisions of paragraphs 2 and 6 below.

2. TYPE OF BOND

Each Licensee shall be covered by a Brokers Blanket Bond, Standard Form No. 14. A Licensee may be covered by Bankers Blanket Bond, Standard Form No. 24, if it meets the provisions of paragraph 3 following. In general, riders to such standard form bonds are unacceptable and should not be used unless they patently increase the benefits under the policy. SBA has held the following riders to be unacceptable with respect to Brokers Blanket Bond, Standard Form No. 14:

SR 5307, Valuation Clause Rider;
SR 5568, Discovery Rider (Form 14);
SR 5571, Rider-Discovery Form, or
SR 5771, Rights after Termination or Cancellation;
SR 5301, Delete Misplacement Rider.

3. BANKS

A Licensee, the majority (more than 50 percent) of whose voting stock is owned by one or more commercial banks that are members of the Federal Deposit Insurance Corporation, or the majority of whose voting stock is owned by a single bank holding company whose subsidiary banks are members of the Federal Deposit Insurance Corporation, may be included as a joint insured under a Bankers Blanket Bond, Standard Form No. 24, which insures the parent commercial bank(s) or the parent bank holding company. In those instances when and to the extent that coverage under Bankers Blanket Bond, Standard Form No. 24, has been restricted by the use of one or more deductible insuring clauses which would apply to the Licensee also, a Brokers Blanket Bond, Standard Form No. 14, must be employed to furnish coverage for the deductible amounts.

4. APPROVAL OF BANK DIRECTORS

In order for the provisions of paragraph 3 above to be applicable, the board of directors of the commercial bank(s) or the bank holding company must approve extending the Bankers Blanket Bond, Standard Form No. 24, to include the Licensee as a joint insured. They also must approve any Brokers Blanket Bond, Standard Form No. 14, needed to furnish the coverage restricted by deductible insuring clauses as set forth in paragraph 3. A certified copy of the minutes of the meeting(s) of the board of directors of such parent organization(s) at which such bond or bonds were approved shall be retained in the permanent records of the Licensee.

5. APPROVAL OF LICENSEE'S DIRECTORS

The board of directors of the Licensee must approve the fidelity bond or bonds of the Licensee. A certified copy of the minutes of the meeting(s) of the board of directors at which such approval was given must be retained in the permanent files of the Licensee. In addition, the Licensee must obtain from the issuer of such fidelity bond a statement in writing certifying that the bond or bonds, as provided, fulfill the requirements set forth herein to the best of the issuer's knowledge and belief.

6. CANCELLATIONS AND CLAIMS

Each Licensee, at least 30 days prior to making any request to the surety to terminate or cancel such bond, shall notify SBA in writing of its intent to terminate or cancel the bond. Each Licensee shall have as a part of its verified bond a rider or endorsement providing that the surety will notify SBA of its intent to cancel the fidelity bond at least 30 days in advance of the effective date of the cancellation. Each Licensee shall notify SBA immediately in writing of any claim for loss filed under the bond with the surety. Such notifications to SBA shall be by certified mail addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

7. AMOUNTS

The minimum amount of fidelity bond for each Licensee acceptable to SBA shall be based upon the total amount of the assets of the Licensee plus the unpaid balance of loans and investments which the Licensee has contracted to service for others, as follows:

Assets plus loans and investments serviced for others:	*Minimum coverage*
Up to $400,000	$25,000
$400,001 to $500,000	30,000
$500,001 to $750,000	40,000
$750,001 to $1,000,000	50,000
$1,000,001 to $2,000,000	75,000
$2,000,001 to $3,000,000	100,000
$3,000,001 to $4,000,000	125,000
$4,000,001 to $5,000,000	150,000
$5,000,001 to $7,500,000	175,000
$7,500,001 to $10,000,000	200,000
$10,000,001 and over	(1)

[1] $200,000 plus $10,000 for each $1 million or fraction thereof over $10 million, except that no Licensee shall be required to provide and maintain a fidelity bond in an amount greater than $1 million.

8. BANK CUSTODIAN

Notwithstanding the provisions of paragraph 7 above, if a Licensee's portfolio securities are held by a commercial bank, which is a member of the Federal Deposit Insurance Corporation, as custodian under a custodianship agreement, such commercial bank's fidelity bond may be construed as furnishing the Licensee with adequate surety protection for securities and funds in its custody: *Provided*, That the amount of assets, as defined in paragraph 7, in the possession of the Licensee at any one time, or $400,000, whichever is greater, is covered by a Brokers Blanket Bond, Standard Form No. 14.

ADDENDUM II—REALIZATION AND USE OF INCOME AND GAINS

1. PURPOSE

This addendum provides guidance to SBICs for the determination of the realization of operating income and gains on investments and the use of such profits for various corporate purposes.

2. RECOGNITION OF PROFIT

a. *Income From Operations.* Licensees may, provided the collection of such income is reasonably assured:

(1) Treat income from dividends and fees as realized when a transaction is effected in the ordinary course of business, and

(2) Treat commitment income and interest income as realized when a transaction is effected, or through the passage of time.

b. *Gains From Sales of Assets.* Assets here considered include portfolio securities, assets acquired in liquidation of loans and debt securities (including successor assets to those originally acquired in such liquidation), and those classified as other assets.

(1) Gain on the sale of assets when the sale represents a final transaction may be recognized as realized gain immediately when received by a Licensee in cash (money, checks, or negotiable money orders), demand certificates of deposit issued by banks which are members of the Federal Deposit Insurance Corporation, and/or negotiable direct obligations of the U.S. Government.

(2) That portion of cash installment payments representing gain may also be recognized as realized gain immediately as such payments are received when the installment feature is all that prevents characterization of the transaction as final.

(3) Any transaction with recourse upon the Licensee or involving any understanding, agreement, option, privilege, or other rights to repurchase by, and/or resell to, the Licensee shall not be considered a final transaction.

(4) Any reacquisition of the assets by the Licensee, whether or not the result of prior agreement or rights, shall be construed by SBA as a nullification of the finality of the original sale transaction.

(5) Any gain on sale of assets which does not qualify as realized gain in accordance with the foregoing shall be deferred pending such realization.

3. USE OF PROFITS

a. Only profits realized in accordance with the foregoing may be:

(1) Used for obtaining loan funds from SBA,

(2) Used for payment of dividends, or

(3) Treated as realized profits for improvement of bargaining position in mergers.

b. Profits realized as above may be used also for correcting capital impairment. In addition, noncash gain on the sale of assets to a bona fide purchaser, which gain has been deferred, may be recognized by SBA for the purpose of correcting capital impairment. This recognition will not be granted if uncertainty as to the ultimate realization of profit is so great that business prudence, as well as generally accepted accounting principles, would preclude such recognition of gain. Circumstances such as any of the following would raise a serious question as to the propriety of the current recognition of any gain:

(1) Assets received in exchange for assets disposed of consist of capital stock having no quoted market value, or other noncash real or personal property which cannot be reasonably evaluated.

(2) Evidence of financial weakness of the purchaser.

(3) Substantial uncertainty as to the amount of costs and expenses to be incurred.

(4) Substantial uncertainty as to the amount of proceeds to be realized because of form of consideration or method of settlement; for example, nonrecourse notes, noninterest-bearing notes, purchaser's stock, and notes with optional settlement provisions, all of indeterminable value.

(5) Amount and/or time of payment indeterminate, being dependent upon future sales or other action.

(6) Retention of effective control of the asset by the Licensee.

(7) Limitations and restrictions on the purchaser's profits and on development or disposition of the asset.

(8) Simultaneous sale and repurchase by the same or affiliated interests.

(9) Concurrent loan to or other financing of the purchaser.

(10) Small, or no down payment.

(11) Simultaneous sale and leaseback of asset.

4. PROCEDURE FOR OBTAINING SBA RECOGNITION OF NONCASH GAIN FOR THE PURPOSE OF CORRECTING CAPITAL IMPAIRMENT

The Licensee should submit to SBA, in triplicate, a summary statement identifying each sale transaction involved, giving the following particulars:

a. Portfolio securities, acquired (or successor) assets, or other assets parted with and their cost less allowance for losses, proceeds obtained, and net gain or loss,

b. Name of purchaser and affiliation (if any) with Licensee,

c. Description and value of consideration received, including terms and collateral (if any) of any debt instruments, and

d. Provisions of any rights or privileges obtained or granted by the Licensee.

5. ACCOUNTING REQUIREMENTS

a. *Income From Operations.* Restrictions on the classification of income as realized and procedures to be followed when such amounts are not to be considered as realized are found in the notes to income accounts Nos. 500, 512, 516, 532 in the System of Account Classifications for Small Business Investment Companies (Part 111 of the regulations).

b. *Gains From Sales of Assets.*

(1) Any profit on the sale of assets which does not qualify as realized gain in accordance with section 2.b. of this addendum should be credited to account No. 383, Other Deferred Credits, pending such realization.

(2) SBA recognition of noncash gain on sales of assets shall not constitute approval to transfer the amount involved from account No. 383 to the appropriate gain accounts, as such action shall remain dependent on meeting the qualifications in section 2.b. of this addendum.

APPENDIX 2—INSTRUCTIONS FOR PREPARATION OF THE FINANCIAL REPORT, SBA FORM 468 (9–67)

GENERAL

There are set forth herein the instructions for preparation of the Financial Report, SBA Form 468, which report is required by Small Business Administration regulations to be filed with SBA by each licensed small business investment company at the end of the first 6-month period of each fiscal year and at the end of each fiscal, such fiscal year being, for SBA purposes, the period beginning April 1 and ending March 31, and at such other times as SBA may request. The Financial Report filed by each Licensee shall present fairly the financial position of the Licensee as of the close of the period covered by the report and the results of the Licensee's operations for such period, and shall be prepared in accordance with these instructions.

The Financial Report, SBA Form 468, shall be filed in triplicate with the Investment Division, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, on or before the last day of the month immediately following the close of the period covered by the report (in the case of an unaudited report), and on or before the last day of the third month following the close of the period covered by the report (in the case of an audited report).

Licensees which are registered investment companies should refer to the rules promulgated by the Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, for the official requirements as to financial reports to be filed with SEC and the time allowed for filing.

The Financial Report, SBA Form 468, requires a statement of financial condition, statement of surplus reconciliations, statement of income and expense, statement of realized gain or loss on investments, and supporting schedules 1 through 14. If any statement or schedule is not applicable, it is still required to be filed but should be marked "N/A" or "Not Applicable."

When the Licensee has a wholly owned subsidiary organized solely for the purpose of rendering management consulting services, financial reports submitted to SBA by the parent Licensee shall reflect consolidated figures covering the activities of both the parent Licensee and its subsidiary corporation.

When the Licensee has one or more branch offices, the date contained in the basic financial statements and all supporting schedules shall comprise a combination of the figures for the principal office and all branches. All money amounts required to be shown in the financial statements and schedules shall be expressed in whole dollars. Appropriate adjustments of individual amounts shall be made for the fractional part of a dollar so that the items will add to the totals shown.

SBA Form 468A (1–68) Previous editions are obsolete.

HEADING

Set forth in the appropriate spaces the information called for representing the identification and the principal office address of the Licensee. As the employer identification number, enter the number assigned to the Licensee by the U.S. Treasury Department. If such number has not yet been assigned, an Application for Employer Identification Number, Form SS–4, shall be submitted to the U.S. Director of Internal Revenue with whom the Licensee's Federal tax and employee withholding returns are filed.

STATEMENT OF FINANCIAL CONDITION

Assets

Item:

1. *Cash.* State the total of all demand deposits, cash items in process of collection, and the petty cash fund.

2. *U.S. Government obligations, insured savings, and time deposits.* State the sum of (1) the total investment at cost in direct obligations of the U.S. Government and those obligations guaranteed as to principal and interest by the U.S. Government (increase in redemption value of U.S. Savings Bonds purchased at less than face value may be added to the original cost for this purpose), (2) the total amount of funds invested in insured savings accounts in institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and (3) the total amount of funds on time deposit with commercial banks which are members of the Federal Deposit Insurance Corporation, such deposits being evidenced by Time Certificates of Deposit.

3. *Notes receivable.* Show the current portion of the unpaid principal amount of miscellaneous notes receivable, including notes representing amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities.

4. *Accounts receivable.* State the combined total of all amounts due representing (1) advisory, consulting, appraisal, and miscellaneous services rendered, (2) declared dividends on capital stock of small business concerns, (3) sharings in the income of small business concerns, (4) amounts due on open account from debtors on sale of assets acquired in liquidation of loans and debt securities, (5) "participating" companies' portions of principal and accrued interest receivable from financed small business concerns, (6) miscellaneous current receivables, (7) accrued compensation receivable for services rendered to "participating" companies, and (8) accrued commitment fees receivable for making funds available on a deferred basis to small business concerns and to "initiating" companies in connection with the latter's financing of small business concerns.

(a) *Less: Allowance for uncollectibles* (applicable to items 3 and 4). State the amount of the valuation reserve provided for estimated losses on the foregoing receivables.

5. *Accrued interest receivable.* State the total amount of interest accrued on loans to and debt securities of small business concerns, United States Government obligations (direct and fully guaranteed), notes receivable, sales contracts, and other interest-bearing amounts due from debtors, including funds placed in escrow pending the closing of financing.

(a) *Less: Allowance for uncollectibles.* State the amount of the valuation reserve provided for estimated losses of accrued interest receivable.

6. *Due from directors, officers, and employees.* Show the unpaid balance of amounts advanced to directors, officers, and employees.

7. *Funds in escrow and other current assets.* State the combined total of (1) funds in escrow pending the closing of financing for small business concerns, (2) the current portion of prepaid expenses and deferred charges, and (3) any miscellaneous current assets not provided for elsewhere.

8. *Total Short-Term Assets.* Enter the total of the appropriate amounts opposite items 1, 2, 4(a), 5(a), 6, and 7.

9. *Loans (section 305).* Show the reporting company's portion of the unpaid principal balance of loans made to small business concerns pursuant to section 305 of the Small Business Investment Act of 1958, as amended. Obligations acquired from small business concerns which carry the right through conversion or through exercise of stock purchase warrants or options by the holder thereof to acquire stock in the small business concerns may be obtained only under section 304 of the Act and are not to be included in this item but in item 10.

(a) *Less: Amount sold with recourse.* Show the reporting company's portion of the unpaid principal balance of loans outstanding to small business concerns which have been sold with recourse upon the company in the event of default.

(b) *Less: Allowance for uncollectibles.* State the amount of the valuation reserve provided for estimated losses on the reporting company's portion of loans (section 305).

(c) *Less: Unearned discount, fees, etc.* Show the reporting company's portion of the total of unearned discount, fees, and other charges included in the unpaid principal balance of loans (section 305).

10. *Debt securities of SBCs (section 304).* Show the unpaid principal balance of the reporting company's portion of small business concerns' debt securities, convertible, and with attached (accompanying) stock purchase warrants or options, and debt securities divested of stock rights, all acquired by the company pursuant to section 304 of the Small Business Investment Act of 1958, as amended.

(a) *Less: Amount sold with recourse.* Show the reporting company's portion of the unpaid principal balance of small business concerns' debt securities sold with recourse upon the company in the event of default.

(b) *Less: Allowance for losses.* State the amount of the valuation reserve provided for estimated losses on the reporting company's portion of debt securities of SBCs (section 304).

(c) *Less: Unearned discount, fees, etc.* Show the reporting company's portion of the total of unearned discount, fees, and other charges included in the unpaid principal balance of debt securities (section 304).

11. *Capital stock of SBCs (section 304).* State the value at cost of the reporting company's portion of small business concerns' convertible capital stock, capital stock with stock purchase warrants or options, and other capital stock (without conversion privileges or stock purchase rights), all acquired by the company pursuant to section 304 of the Small Business Investment Act of 1958, as amended.

(a) *Less: Allowance for losses.* State the amount of the valuation reserve provided for estimated losses on the reporting company's portion of capital stock of SBCs (section 304).

12. *Warrants, options, and other stock rights, acquired from SBCs (section 304).* State the value at purchase price or at cost as otherwise determined of the reporting company's portion of warrants, options, and other stock rights acquired by the company from small business concerns pursuant to section 304 of the Small Business Investment Act of 1958, as amended.

(a) *Less: Allowance for losses.* State the amount of the valuation reserve provided for estimated losses on the reporting company's portion of warrants, options, and other stock rights acquired from SBCs (section 304).

13. *Assets acquired in liquidation of loans and debt securities.* State, as recorded in the books of account, the reporting company's investment in assets acquired by foreclosure, or otherwise, in liquidation of loans (section 305) and debt securities (section 304), including judgments and sheriffs' certificates.

(a) *Less: Accumulated depreciation.* State the amount of the valuation reserve provided for depreciation of the reporting company's portion of depreciable property acquired in liquidation of loans and debt securities.

(b) *Less: Mortgages payable.* Show the unpaid principal balance of the reporting company's portion of mortgages payable on assets acquired by the company in liquidation of loans and debt securities.

(c) *Less: Allowance for losses.* State the amount of the valuation reserve provided for estimated losses on the reporting company's investment in assets acquired in liquidation of loans and debt securities.

14. *Total Loans and Investments.* Enter the total of the appropriate amounts opposite items 9(c), 10(c), 11(a), 12(a), and 13(c).

15. *Corporate premises owned and furniture and equipment.* State the combined total of (1) the actual cost of acquisition of the land and building used as the company's office quarters, plus the actual cost of any benefits applicable to the land or improvements applicable to the building, or the unamortized cost of improvements to leased property used as such office quarters, and (2) the cost of furniture, fixtures, and equipment (including automobiles) owned by the company.

(a) *Less: Accumulated depreciation.* Show the amount of (1) the valuation reserve provided for depreciation of the building and other depreciable improvements of corporate premises owned and used as the company's office quarters, and (2) the valuation reserve provided for depreciation of furniture, fixtures, and equipment (including automobiles) owned by the company.

16. *Organization costs.* State the unamortized amount of legal fees, promotional expense, stock certificate costs, incorporation fees, taxes, and similar costs, incurred in organizing the company. (See U.S. Treasury regulations for basis of amortization.)

17. *Other.* State the total amount of assets at cost not provided for elsewhere, such as the portion of miscellaneous notes receivable maturing after one year, and similarly noncurrent portions of recoverable amounts advanced for the protection and preservation of the company's investments and of prepaid expenses and deferred charges.

18. *Total Other Assets.* Enter the total of the appropriate amounts opposite items 15 (a), 16, and 17.

19. *Totals.* Enter the total of items 8, 14, and 18.

Liabilities, Capital Stock, and Surplus

20. *Accounts payable.* State the total of accounts payable (1) representing "participating" companies' portions of principal and accrued interest receivable from financed small business concerns, (2) for services rendered to the company on its participations in financing transactions, (3) representing commitment fees for having funds made available on a deferred basis by "participating" companies, and (4) representing miscellaneous items on open account. Amounts included relating to the purchase of securities, if significant, shall also be shown parenthetically.

21. *Accrued interest payable.* State the total amount of interest accrued on the company's notes, mortgages, and debentures payable; on loans (section 305) and debt securities (section 304) of small business concerns sold with recourse on the company; and on other interest-bearing obligations.

22. *Accrued taxes on income.* Show the total amount of estimated Federal, State, and other income taxes on net income and net realized gain on investments accrued and unpaid.

23. *Other accrued expenses.* State the total amount of the company's liability for accrued salaries, accrued taxes on payroll, and other accrued expenses not provided for elsewhere.

24. *Dividends payable.* State the total amount of the company's liability for dividends declared by the board of directors on capital stock issued and outstanding.

25. *Employee taxes withheld.* Show the total amount of income and social security taxes withheld from employees' salaries and not yet remitted to the appropriate collectors of such taxes.

26. *Unapplied receipts and trust receipts.* State the total amount of (1) funds received by the company which have not been applied to loans (section 305), debt securities (section 304), interest receivable, etc., and (2) funds withheld or received in trust not provided for elsewhere, including earnest money deposits and funds withheld from employees' salaries for the purchase of U.S. Savings Bonds, payment of group life insurance premiums, payment of pension fund contributions, etc.

27 and 33. *Other.* Show the current and noncurrent portions, respectively, of the unpaid principal balance of notes payable other than for funds borrowed, and of liabilities and deferred credits not provided for elsewhere, including that portion of gain on sale of assets which is not realized in cash, demand certificates of deposit issued by FDIC-member banks, and/or negotiable direct obligations of the U.S. Government. Insert in the spaces provided the current and noncurrent portions, respectively, of amounts owed to directors, officers, and employees, other than salaries.

28. *Total Short-Term Liabilities.* Enter the total of items 20 through 27.

29. *Notes payable to SBA (section 303).* State the total unpaid principal balance of notes payable (1) for funds borrowed and received directly from SBA and (2) for funds borrowed from others through guaranteed loans which subsequently have been purchased by SBA, State parenthetically the total amount of loans and investments pledged as collateral for these obligations.

30. *Notes payable to other than SBA, guaranteed by SBA (section 303).* State the total unpaid principal balance of notes payable for funds borrowed from other than SBA and guaranteed by SBA. State parenthetically the total amount of loans and investments pledged as collateral for these obligations.

31. *Notes payable to other than SBA, not guaranteed by SBA.* State the total unpaid principal balance of notes payable for funds borrowed from other than SBA and not guaranteed by SBA. State parenthetically the total amount of loans and investments pledged as collateral for these obligations.

32. *Mortgages payable for funds borrowed.* State the total unpaid principal balance of mortgages payable for funds borrowed on corporate premises or other real estate owned by the company, including purchase money mortgages, conditional sales contracts, etc., given by the company in the acquisition of real property.

33. (See item "27 and 33" above.)

34. *Debentures payable, subordinated, issued to SBA (section 302).* Show the unpaid principal balance of funds received by the company under its subordinated debentures payable issued to SBA.

35. *Total Liabilities.* Enter the total of the appropriate amounts opposite items 28, 29, 32, 33, and 34.

36. *Capital stock.* Show the total par or stated value of the capital stock of the company issued and not retired.

37. *Paid-in surplus.* State the total amount of surplus arising from (1) sales initially of the company's capital stock at a price in excess of par value (including amounts transferred from capital stock subscribed as a price above par, when shares are issued); (2) donations to the company of its issued capital stock carried as treasury stock at fair market value or par value; (3) retirements of capital stock purchased at less than the par value thereof; (4) sales of treasury stocks in excess of its carrying value on the books of the company; (5) donations or gifts to the company of assets carried at not in excess of fair market value; and (6) other capital equity transactions with stockholders.

38. *Less: _____ shares of treasury stock at cost.* State the number of shares and the total amount at cost (if purchased) and at fair market value or par value (if donated) of the company's issued capital stock which has been reacquired and has not been retired.

39. *Total Stockholders' Paid-In Capital and Paid-In Surplus.* Enter the balance resulting from the deduction of item 38 from the appropriate amount opposite item 37.

40. *Capital stock subscribed.* Show the total amount at the subscription price of the company's capital stock subscribed.

(a) *Less: Subscriptions receivable.* Show the total amount of the unpaid balances of capital stock subscriptions receivable.

41. *Total.* Enter the total of the appropriate amounts opposite items 39 and 40(a).

42. *Retained earnings.* State the accumulated balance of the company's undistributed net income since incorporation, including both net income from operations and net realized gain on investments.

43. *Appropriated retained earnings.* State the total amount of retained earnings earmarked for some future purpose and thus restricted from dividend distribution.

44. *Total Capital Stock and Surplus.* Enter the total of the appropriate amounts opposite items 41 and 43.

45. *Total.* Enter the total of items 35 and 44.

Memorandum footnote. Show in the space provided the market or fair value of loans and investments (shown at cost less allowance for losses in item 14 of the Statement of Financial Condition). In determining the market or fair value of portfolio securities (including securities which may be readily acquired through exercise of rights), securities for which market quotations are readily available shall be valued at the market bid price, provided the securities are registered, or readily registrable, and salable, and further provided that, in the opinion of the board of directors, the bid price could be realized on immediate liquidation of the investment.

Securities other than those referred to above shall be at cost less allowance for probable losses unless, because of steady progress in the affairs of the portfolio company, an increase above cost to the small business investment company is clearly indicated in the

SBIC's equity in the book value of the portfolio company's securities as shown on the portfolio company's books. In the latter case the securities may be valued at fair value as determined in good faith by the board of directors.

The value of loans and investments determined in accordance with the foregoing shall be reduced for purposes of this report by the amount of what would be an appropriate provision for taxes in respect of the unrealized appreciation included in the determined value.

In column (13) of Schedule 1, column (12) of Schedule 2, and column (8) of Schedule 5, identify with an asterisk each security which was valued above cost in arriving at the amount shown as market or fair value of loans and investments.

Footnote on contingent liabilities. Place at the bottom of page 2 of the Financial Report, SBA Form 468(9-67), a footnote indicating the total amount of all contingent liabilities of the company. This amount shall be the same as the grand total of Schedule 9 of the report.

STATEMENT OF SURPLUS RECONCILIATIONS

Set forth in this statement all activities in accounts for paid-in surplus, retained earnings, and appropriated retained earnings during the fiscal year to date, showing opening balances, additions and deductions, and balances at close of the period. State separately the various additions and deductions, describing clearly the nature of the transactions out of which the items arose. Net income or loss from page 3 should be labeled "from net income," and realized gain or loss on investments from page 4 should be labeled "from net realized gain (or loss) on investments." With respect to dividends, show for each class of shares the amount per share and in the aggregate.

STATEMENT OF INCOME AND EXPENSE FOR THE FISCAL YEAR TO DATE

Income

Item:

1. *Commitment income.* State the total of the amount of income earned on commitments to small business concerns for loans (section 305) and equity securities (section 304), and the amount of commitment income on deferred participations of the company in financing initiated by other lenders or investors.

2. *Interest on loans.* State the amount of interest earned on loans (section 305) to small business concerns.

3. *Interest on debt securities.* State the amount of interest earned on debt securities of small business concerns (section 304) owned by the company.

4. *Interest on invested idle funds.* State the total amount of interest earned on (1) time deposits in banks which are members of the Federal Deposit Insurance Corporation, (2) U.S. Government obligations, direct and fully guaranteed, owned by the company, and (3) funds of the company in insured savings accounts in institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

5. *Interest income—other.* State the amount of interest earned on miscellaneous notes receivable, funds in escrow pending closing of financing, and on other interest-bearing receivables not provided for elsewhere.

6. *Management consulting service fees.* State the amount of fees charged for management consulting services rendered to small business concerns and other small business investment companies.

7. *Investigation and service fees charged other lenders.* State the total of the amount of fees charged for investigation and services rendered to banks of other lenders or investors, and the amount of compensation for financial services rendered in connection with participations sold.

8. *Application and appraisal fees.* State the amount of fees charged for application, appraisal, investigation, and related services rendered to small business concerns.

9. *Dividends on capital stock of SBCs.* State the amount of income from dividends on capital stock of small business concerns.

10. *Sharings in income of SBCs.* State the amount of sharings or participations in the income of small business concerns from which the company has acquired debt securities (section 304).

11. *Income less expense of $_____ from assets acquired in liquidation of loans and debt securities.* State the amount of income earned over and above expense (including interest on related mortgages payable) on assets acquired in liquidation of loans and debt securities, including income from the operation of properties so acquired. Show the amount of the expense as a separate item in the space provided therefor.

12. *Other income.* State the total of the amount of income earned from the leasing or renting to others of portions of corporate premises owned and the amount of all other income earned not provided for elsewhere.

13. *Total Income.* Enter the total of the appropriate amounts opposite items 1, 5, 8, 10, and 12.

Expenses

14. *Commitment expense.* State the total amount of commitment expense on (1) commitments from SBA to make funds available on subordinated debentures, (2) commitments from lending institutions other than SBA, and (3) deferred participations of other lenders or investors.

15. *Interest on obligations payable to SBA.* State the total amount of interest expense on notes payable and subordinated debentures payable, all issued for funds borrowed directly from SBA, or borrowed from others through guaranteed loans subsequently purchased SBA.

16. *Interest on obligations payable to other than SBA.* State the total amount of interest expense on (1) loans to small business concerns sold with recourse upon the company, (2) debt securities of SBCs sold with recourse upon the company, (3) notes payable for funds borrowed from other than SBA, (4) mortgages payable for funds borrowed, and (5) miscellaneous obligations.

17. *Stock record and other financial expenses.* State the total of the amount of charges to the company by the transfer agent and the registrar for services rendered in connection with the issuance and transfer of the company's capital stock, and the amount of other financial expenses not provided for elsewhere.

18. *Total Financial Expenses.* Enter the total of items 14 through 17.

19. *Advertising and promotional costs.* Show the cost of advertising and promoting the company's services, including the cost of entertaining prospective borrowers and clients.

20. *Appraisal and investigation costs.* State the amount of charges made by outside firms and individuals for appraisal, investigation, and related services rendered to the company.

21. *Auditing and examination costs.* State the total amount of charges for auditing, examination, and bookkeeping services rendered by accountants not on the company's payroll, and charges for services rendered by SBA examiners.

22. *Communications.* Show the amount of telephone, telegraph, and postage expense.

23. *Cost of space occupied.* Show the cost of space occupied such as rent, alterations, amortization of leasehold improvements, light, heat, power, janitor service, maintenance and repair expense on buildings, furniture, and equipment (other than automobiles), etc.

24. *Depreciation of corporate premises owned, furniture, and equipment.* State the total amount of the provision for depreciation of the building and other depreciable improvements of corporate premises owned and used as the company's office quarters, and for depreciation of furniture and equipment (other than automobiles) owned by the company.

25. *Directors' and stockholders' meetings costs.* Show the total of the amount of directors' fees and travel expense for attendance at directors' and stockholders' meetings and the cost of holding stockholders' meetings, such as rental of the meeting hall and related expenses.

26. *Insurance.* State the total expense to the company for fire, theft, employee group life insurance, and other insurance, including fidelity bond and insurance on automobiles.

27. *Investment adviser costs.* State the amount of charges made by outside firms and individuals for furnishing consultation and advice to the company with respect to the desirability of investing in, purchasing, or selling loans, debt securities, and capital stock of small business concerns and other property.

28. *Legal services.* State the cost of legal services rendered to the company.

29. *Salaries of officers.* State the amount of salary cost of all officers of the company, including directors' salaries, if any, but not directors' fees for attendance at meetings.

30. *Salaries of employees.* State the salary cost of all employees other than officers, including salaries of any temporary or part-time employees.

31. *Taxes, excluding income taxes.* Show the amount of all taxes, including those on corporate premises owned, motor vehicle, and personal property, social security taxes (company's portion), and other taxes charged to the company, exclusive of income taxes.

32. *Travel.* Show the amount of all travel expense, including transportation charges; automobile maintenance, operating expense, and depreciation expense; and meals, lodging, telephone, telegraph, and other company costs incurred by officers and employees while in a travel status.

33. *Employee benefits expense.* State the cost assumed by the company in contributing to funds providing for employee retirement benefits and other types of employee benefits except group life insurance.

34. *Organization expense.* State the total amount of legal fees, promotional expense, stock certificate costs, incorporation fees, taxes, and other related costs incurred in organizing the company which are charged to expense as incurred or are transferred to expense periodically through the amortization of such costs previously established as an asset.

35. *Miscellaneous operating expenses.* Show the total amount of operating expenses not provided for elsewhere, including expenses incurred under contracts for management of the company; dues, subscriptions, donations, and similar items; charges for custodial or safekeeping services in connection with portfolio securities; bank service charges, exchange on checks, protest fees, etc.; and the cost of office supplies, such as stationery, accounting forms, binders, pencils, etc.

36 through 39. (For unclassified items.)

40. *Total Operating Expenses.* Enter the total of items 19 through 39.

41. *Other expenses.* Show the total amount of nonoperating expenses not provided for elsewhere, including compensation expense for financial services received from "initiat-

ing" companies in connection with participations purchased.

42. *Total Expenses.* Enter the total of items 18, 40, and 41.

43. *Net Operating Income before provision for probable losses and income taxes.* Enter the balance resulting from the deduction of item 42 from item 13.

44. *Provision for probable losses on receivables.* Show the amount provided during the fiscal year to date for losses on notes and accounts receivable, and interest receivable.

45. *Provision for probable losses on loans, investments, and other assets.* Show the amount provided during the fiscal year to date for estimated losses on loans (section 305); debt securities of small business concerns (section 304); capital stock of small business concerns; warrants, options, and other stock rights acquired from SBCs; and assets acquired in liquidation of loans and debt securities.

46. *Net Operating Income before provision for income taxes.* Enter the balance resulting from the deduction of the appropriate amount opposite item 45 from item 43.

47. *Federal income taxes—net income.* Show the amount of Federal income taxes for the fiscal year to date relating to net income exclusive of net realized gain or loss on investments.

48. *State and other income taxes—net income.* Show the amount of State and other non-Federal income taxes for the fiscal year to date relating to net income exclusive of net realized gain or loss on investments.

49. *Net Income (Loss) From Operations.* Enter the balance resulting from the deduction of the appropriate amount opposite item 48 from item 46.

STATEMENT OF REALIZED GAIN OR LOSS ON INVESTMENTS

1. *U.S. Government securities.* Show the aggregate cost, aggregate new proceeds, and net gain or net loss on the sale or other disposition of U.S. Government obligations, direct and fully guaranteed. For items 1 through 7 the appropriate column should be used as explained in footnotes (a) and (b) on the form.

2. *Debt securities of SBCs.* Show the aggregate cost less allowance for losses, aggregate net proceeds, and net gain or loss on the sale or other disposition of debt securities of small business concerns.

3. *Capital stock of SBCs.* Show the aggregate cost less allowance for losses, aggregate net proceeds, and net gain or loss on the sale or other disposition of capital stock of small business concerns.

4. *Warrants, options, and other stock rights acquired from SBCs.* Show the aggregate cost less allowance for losses, aggregate new proceeds, and net gain or loss on the sale or other disposition of warrants, options, and other stock rights acquired by the company from small business concerns.

5. *Assets acquired in liquidation of loans and debt securities.* Show the aggregate cost less allowance for losses and mortgages payable, aggregate net proceeds, and net gain or loss on the sale or other disposition of assets acquired in liquidation of loans and debt securities of small business concerns. The aggregate cost shown for this item shall be the same as that recorded in the books of account on the basis determined by the board of directors from among (1) bid-in price of the property, (2) agreed consideration for the property, and (3) fair appraised value of the property, but not to exceed the total amount of the related loan or debt security involved.

6. *Other.* Show the aggregate cost less allowance for losses, aggregate net proceeds, and net gain or loss on the sale or other disposition of any investments not included in items 1 through 5.

7. *Net Gain and/or Loss on Investments.* Enter the net total of items 1 through 6.

8. *Combined Net Gain (Loss) on Investments.* Enter the balance resulting from the deduction of item 7, column (5) from item 7, column (4).

9. *Less portion of gain not realized in cash, demand certificates of deposit issued by FDIC-member banks, and/or negotiable direct obligations of the U.S. Government.* State the amount of the above gain represented by proceeds other than cash, demand certificates of deposit issued by FDIC-member banks, and/or negotiable direct obligations of the U.S. Government.

10. *Net Realized Gain (Loss) on Investments before provision for income taxes.* Enter the balance resulting from the deduction of item 9 from item 8.

11. *Federal income taxes—net realized gain on investments.* State the amount of estimated Federal income taxes applicable to net realized gain on investments for the fiscal year to date.

12. *State and other income taxes—net realized gain on investments.* Show the amount of estimated State and other non-Federal income taxes applicable to net realized gain on investments for the fiscal year to date.

13. *Total provision for income taxes.* Enter the total of items 11 and 12.

14. *Net Realized Gain (Loss) on Investments.* Enter the balance resulting from the deduction of item 13 from item 10.

NOTE: Describe the transactions in this Statement in accordance with the instructions set forth in the note at bottom of the form.

SCHEDULE 1—LOANS AND DEBT SECURITIES

Furnish in this schedule a summary of all loans (section 305) and debt securities (section 304), setting forth the pertinent data indicated by the column headings. The items to be listed shall include: (1) All loans held, made, or otherwise obtained, or disposed of by the company during the fiscal year to date, and (2) all debt securities held, acquired, converted, or disposed of during such period. Participations purchased in loans and debt securities shall be included, but only the reporting company's portion of loans and debt securities in which participations have been sold to others shall be shown.

List each loan and debt security by employer identification number; Standard Industrial Classification code; name of financed small business concern, together with street address, city, state, zip code, and county in which located; type (loan or debt security); financing number; interest rate; date and maturity date; principal balance at beginning of period; additions during period; deductions during period; and principal balance at close of period. The total in column (11) for loans shall agree with item 9 of the Statement of Financial Condition and the total in column (11) for debt securities shall agree with item 10 of such Statement.

Show in column 12 for each loan and debt security any allowance for losses established for such item on the basis of the estimated realizable value of the individual item, or any portion of an overall allowance established on a percentage or other basis which has been allocated to the individual item.

Show in column 13 the market value, or fair value as determined by the board of directors, of each debt security which is determined to be worth more than the cost amount shown for it in column (11) and each loan or debt security which is determined to be worth less than the cost amount shown for it in column (11), minus any allowance for losses established for it as shown in column (12). Any loan or debt security for which an allowance for losses has been established shall not be listed in column (13) at any value higher than cost less such allowance.

An explanatory notation or footnote shall be entered in the schedule with respect to any loan or debt security (or any interest therein) obtained from another Licensee.

The notes referred to on the form, and which must be carefully observed in preparation of Schedule 1, are as follows:

(a) Group together the financing for each small business concern and classify each financing by category (loan or debt security) in column (4), treating multiple disbursements under the same financing agreement as a single financing. Show the totals of each category of financing and the grand totals of all loan and/or debt security financing on the last sheet of this schedule.

(b) In column (1) enter the employer identification number of each listed small business concern; if a concern does not have such number, it should obtain one by filing Form SS-4 with the U.S. Director of Internal Revenue with whom its Federal tax and employee withholding returns are filed. In column (2) enter for each listed small business concern the 4-digit Standard Industrial Classification Code of the principal industry in which the concern is engaged; refer to the SIC Manual issued by the Bureau of the Budget.

(c) If the Licensee has had more than one financing in the same category outstanding to the same small business concern (cumulative beginning with Mar. 31, 1966, outstanding balances), each such similar financing should be assigned a financing number (1–2–3, etc.) for identification purposes, and this number should be shown in column (5) on this report and on future reports in relation to the same financing. A number once assigned to a specific financing of a small business concern should never be reassigned to another financing in the same category to the same concern.

(d) In column (11) identify each item "pledged" or "earmarked" by letter (P) or letter (E), as appropriate. Also, identify by the letter (V) each item qualifying under the regulations as venture capital. Show the total of all venture capital amounts immediately under the "Grand Totals" line at the foot of column (11).

(e) Show in column (14) opposite each debt security financing the percentage of the financed small business concern's voting securities which has been and/or can be obtained by the Licensee through exercise of conversion privileges and/or stock purchase warrants or options received in connection with the specific financing. This percentage shall be computed without giving consideration to the possibility of simultaneous exercise of stock rights by other investment interests. Whenever a Licensee considers it important to disclose that its percentage of actual and potential ownership is affected by the probable action of others in exercising their stock rights, a footnote should be appended to the percentage figure arrived at by consideration of only the Licensee's action. In such footnote the percentage of actual and potential ownership giving consideration to the probable action of others should be set forth, together with an explanation including the names of the other investors who are likely to exercise their rights, the percentages of actual and potential ownership they hold, and the general terms of their stock rights.

SCHEDULE 2—CAPITAL STOCK OF SBCs AND WARRANTS, OPTIONS AND OTHER STOCK RIGHTS ACQUIRED FROM SBCs

Furnish in this schedule a summary of all investments (section 304), other than debt securities, setting forth the pertinent data indicated by the column headings. The items

to be listed shall include: (1) All capital stock of small business concerns held, acquired, converted, or disposed of during the fiscal year to date, and (2) all warrants, options, and other stock rights acquired from SBCs (for which a cost has been determined separate from that of the financing instruments which they accompanied and/or for which there exists a market value, or a fair value as determined by the board of directors) which were held, obtained, surrendered, expired or sold during such period. Participations purchased in investments shall be included, but only the reporting company's portion of investments in which participations have been sold to others shall be shown.

List each investment by employer identification number; Standard Industrial Classification code; name of financed small business concern, together with street address, city, state, zip code, and county in which located; type (stock, or warrant or option); financing number; date; balance at cost at beginning of period; cost of additions during period; cost of deductions during period; and balance at cost at close of period.

The total in column (10) for capital stock of SBCs shall agree with item 11 of the Statement of Financial Condition and the total in column (10) for warrants, options, and other stock rights acquired from SBCs shall agree with item 12 of such Statement.

Show in column (11) for each investment any allowance for losses established for such item on the basis of the estimated realizable value of the individual item, or any portion of an overall allowance established on a percentage or other basis which has been allocated to the individual item.

Shown in column (12) the market value, or fair value as determined by the board of directors, of each investment which is determined to be worth more than the cost amount shown for it in column (10) and each investment which is determined to be worth less than the cost amount shown for it in column (10), minus any allowance for losses established for it as shown in column (11). Any investment for which an allowance for losses has been established shall not be listed in column (12) at any value higher than cost less such allowance.

An explanatory notation or footnote shall be entered in the schedule with respect to any investment (or any interest therein) obtained from another Licensee.

The notes referred to on the form, and which must be carefully observed in preparation of Schedule 2, are as follows:

(a) Group together the financings for each small business concern; classify each financing by category (stock or warrants or options) in column (4), treating multiple disbursements under the same financing agreement as a single financing. Show the totals of each category of finacing and the grand totals of all capital stock and/or stock rights financing on the last sheet of this schedule.

(b) In column (1) enter the employer identification number of each listed small business concern; if a concern does not have such number, it should obtain one by filing Form SS-4 with the U.S. Director of Internal Revenue with whom its Federal tax and employee withholding returns are filed. In column (2) enter for each listed small business concern the 4-digit Standard Industrial Classification Code of the principal industry in which the concern is engaged; refer to the SIC Manual issued by the Bureau of the Budget.

(c) If the Licensee has had more than one financing in the same category outstanding to the same small business concern (cumulative beginning with Mar. 31, 1966, outstanding balances), each such similar financing should be assigned a financing number (1-2-3, etc.) for identification purposes, and this number should be shown in column (5) on this report and on future reports in relation to the same financing. A number once assigned to a specific financing of a small business concern should never be reassigned to another financing in the same category to the same concern.

(d) In column (10) identify each item "pledged" or "earmarked" by letter (P) or letter (E), as appropriate. Also, identify by the letter (V) each item qualifying under the regulations as venture capital. Show the total of all venture capital amounts immediately under the "Grand Totals" line at the foot of column (10).

(e) Show in column (13) opposite each financing item the percentage of the financed small business concern's voting securities which has been and/or can be obtained by the Licensee through exercise of conversion privileges and/or stock purchase warrants or options received in connection with the specific financing, or which is represented by the financing item itself. This percentage shall be computed without giving consideration to the possibility of simultaneous exercise of stock rights by other investment interests. Whenever a Licensee considers it important to disclose that its percentage of actual and potential ownership is affected by the probable action of others in exercising their stock rights, a footnote should be appended to the percentage figure arrived at by consideration of only the Licensee's action. In such footnote the percentage of actual and potential ownership giving consideration to the probable action of others should be set forth, together with an explanation including the names of the other investors who are likely to exercise their rights, the percentages of actual and potential ownership they hold, and the general terms of their stock rights.

SCHEDULE 3—DETAILS OF CERTAIN LOANS (SECTION 305) AND INVESTMENTS (SECTION 304) LISTED IN SCHEDULE 1 AND SCHEDULE 2

Enter in this schedule all loans and debt securities shown in Schedule 1 and all investments shown in Schedule 2 concerning which any one or more of the following conditions exist:

1. New or additional financing has been furnished during the fiscal year to date, as shown in column (9) of Schedule 1 or column (8) of Schedule 2.

2. The terms of existing financing have been amended and/or the related collateral has been changed during the fiscal year to date.

3. Any rescheduling, refinancing, or refunding of principal and/or interest has occurred, or conversion of a delinquent item has taken place, during the fiscal year to date. (Full details on such events are to be furnished in column (6) or on an attached sheet.)

4. Installment payments of principal and/or interest on loans or debt securities are past due more than 1 month.

List the items by employer identification number in column (1) and identify them by name of small business concern, type of financing, and financing number in columns (2), (3), and (4). In column (5) show the original principal amount or other cost. Details of the amortization plan and other significant provisions of the financing instruments, including a precise description of capital stock of SBCs, shall be set forth in column (6). The value and description of collateral are to be set forth in columns (7) and (8), respectively. Information as to the portion of such collateral assigned as security for the financing granted by the Licensee is required to be presented in column (8):

If any loans or debt securities earmarked or pledged to SBA are in default as to payment of principal or interest, or with respect to any other covenants of the financing agreements, the repayment delinquencies will, of course, be included in Schedule 4. Any other defaults are to be described in column (6) of Schedule 3. Such earmarked or pledged loans and debt securities shall be identified in the schedule by the letter (E) or (P), as appropriate. If no earmarked loans or debt securities are in default as to principal or interest payments, or as to any other covenants in the financing agreements, a statement to that effect shall be placed on Schedule 3.

SCHEDULE 4—ALLOWANCE FOR LOSSES ON LOANS AND INVESTMENTS—DELINQUENT LOANS AND DEBT SECURITIES

List in this schedule all loans and investments for which an allowance for losses has been established or allocated on a specific item basis and/or which (if loans or debt securities) are delinquent to the extent of having installment payments past due more than 1 month. Identify each item in column (1) by the employer identification number and name of the financed small business concern; indicate by appropriate letter in column (2) the type of financing (loan, debt security, stock, warrants and options); and record the financing number in column (3) if there has been more than one financing of the same type with respect to the same small business concern.

In columns (4) through (8), show the opening balance of the allowance for losses on each security, the additions and deductions pertaining to such allowance, and the closing balance, all relating to the fiscal year to date. If there exists an overall allowance for losses, established on a percentage or other basis and not allocated to individual securities, the beginning and ending balances thereof, together with changes during the period, shall be shown appropriately on the "General allowance" line at the bottom of the schedule. The grand total of column (8) shall equal the sum of items 9(b), 10(b), 11(a), and 12(a) in the Statement of Financial Condition.

Show in column (9) the principal balance or other cost, as of the close of the period, of each security listed on the schedule. In columns (10) and (11) show all installments of principal and/or interest past due more than one month on loans and debt securities. Such portfolio items shall be identified and classified in columns (1), (2), and (3), and any allowances for losses related thereto shall be included appropriately in the columns provided therefor. Any loans or debt securities earmarked or pledged to SBA shall be identified in the Schedule by the letter (E) or (P), as appropriate.

SCHEDULE 5—ASSETS ACQUIRED IN LIQUIDATION OF LOANS AND DEBT SECURITIES—ALLOWANCE FOR LOSSES

List and describe in this schedule, by former debtors (small business concerns), all assets carried during the fiscal year to date in the account for assets acquired in liquidation of loans (section 305) and debt securities (section 304). This will correctly represent only the reporting company's portion of such assets. The balance at the beginning of the reporting period, additions and deductions during the period, and balance at the close of the period shall be shown in columns (3), (4), (5), and (6). The allowance for losses established for the reporting company's portion of the assets held with reference to each small business concern shall be recorded in column (7). Current market value, or fair value as determined by the board of directors at the close of the period shall be shown in column (8). The totals of columns (6) and (7) shall agree with items 13 and 13(c), respectively, of the Statement of Financial Condition.

In column (6) identify by the letter (V) each asset acquired in liquidation of a portfolio security which original security qualified under the regulations as venture capital. Show the total of all such secondary venture capital amounts under the last line at the foot of column (6).

SCHEDULE 6—PARTICIPATIONS AND JOINT FINANCINGS

Show in this schedule all financings in which the reporting company participated and all financings made jointly by the reporting company and one or more other lenders or investors during the fiscal year to date, or which were outstanding at any time during such period. Identify each item in column (1) by the employer identification number and name of the financed small business concern; indicate by appropriate letter in column (2) the type of financing (loan, debt security, stock, warrants, and options); and enter the financing number in column (3) if there has been more than one financing of the same type by the reporting company to the same small business concern.

In column (4) show the original total amount contributed by all parties in the participation or joint financing. The names of such participating or joint financing entities (including the name of the reporting company) shall be shown in column (5) with appropriate indication as to which is the initiating (sponsoring) entity.

Show in column (6), (7), or (8), as appropriate, the reporting company's outstanding principal balance, or other cost, of participation purchased, participation sold, or joint financing, as of the close of the period covered in the report. Enter in column (9) a description of collateral pertaining to each financing, together with information as to the percentage applicable to each party and as to any preferences agreed upon.

SCHEDULE 7—CASH, U.S. GOVERNMENT OBLIGATIONS, INSURED SAVINGS, AND TIME DEPOSITS

Show in Schedule 7a all cash on hand and in general funds demand deposits; funds in imprest bank accounts; and funds on time deposit evidenced by time certificates of deposit. Demand deposits are balances subject to withdrawal without notice and shall be in commercial banks which are members of the Federal Deposit Insurance Corporation. Cash items in process of collection represent those cash items which have been placed with banks for collection. Petty cash shall represent the full amount of the petty cash imprest fund.

List in Schedule 7b(1) all securities owned which have been issued or guaranteed by the U.S. Government, showing the name of the issuer and the title of each issue. Other required data, such as interest rate, call date, maturity date, and principal amount at par of bonds and notes, may be obtained by inspection of the securities or from records of securities pledged. The cost of the securities shall be shown in column (6) and the current market value thereof in column (7).

Show in Schedule 7b(2) all funds invested in insured savings accounts and all funds on time deposit evidenced by time certificates of deposit. Savings accounts shall be in institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. Time deposits shall include all time certificates of deposit held by the company in commercial banks which are members of the Federal Deposit Insurance Corporation.

SCHEDULE 8—DUE FROM DIRECTORS, OFFICERS, AND EMPLOYEES

Show in this schedule amounts due from directors, officers, and employees for advances made to them (listing name and title of debtor in column (1)). The unpaid balance of each amount due at the beginning of the fiscal year shall be shown in column (2); additions, writeoffs, and collections during the fiscal year to date shall be set out in columns (3), (4), and (5); and the balance at the close of the period shall be shown in column (6). The total of column (6) shall agree with item 6 in the Statement of Financial Condition. An explanation shall be furnished for any amount written off or for any collection other than in cash.

SCHEDULE 9—COMMITMENTS OUTSTANDING

Furnish in this schedule a summary showing separately, with subtotals, (1) commitments to small business concerns for equity financing under section 304 of the Act, as amended, (2) commitments to small business concerns for loans under section 305 of the Act, as amended, and (3) commitments to banks or other lenders for deferred participations in loans or commitments to small business concerns. Show the total amount of all commitments.

Separately in this schedule, set forth all obligations of portfolio concerns guaranteed by the company, showing (1) date of guarantee, (2) name of debtor small business concern, (3) name of lender, and (4) outstanding amount of guarantee. Show the total outstanding amount of all guarantees.

Set forth separately in this schedule, with total, all other contingent liabilities.

Show at the bottom of the schedule the grand total of all commitments, guarantees, and other contingent liabilities. This amount shall be the same as that given in the footnote at the bottom of page 2 of the report.

SCHEDULE 10—OBLIGATIONS PAYABLE

Shown in this schedule, by creditors, all obligations payable representing (1) SBA section 302 funds, (2) SBA direct loans (section 303), (3) guaranteed loans purchased by SBA (section 303), (4) loans guaranteed by SBA (section 303), (5) loans not guaranteed by SBA, (6) mortgages payable for funds borrowed, and (7) mortgages payable on assets acquired in liquidation of loans and debt securities. Such liabilities shall be grouped by the foregoing categories, and described in column (2), but subtotals are not required. Guaranteed loans purchased by SBA represent section 303 loans, originally financed by banks, which have been transferred to SBA through reassignment, transfer, and delivery of the notes to SBA.

The interest rate and other terms of each obligation shall be recorded in columns (3) and (4); the unpaid balance at the beginning of the fiscal year and additions and deductions during the fiscal year to date shall be shown in columns (5), (6), and (7); and the balance payable at the close of the period, segregated between (a) amounts owed to SBA for funds borrowed and (b) amounts owed to others for funds borrowed and/or amounts representing mortgages payable on assets acquired in liquidation of loans and debt securities, shall be reflected in columns (8) and (9).

The total of column (8) shall agree with the total of items 29 and 34 of the Statement of Financial Condition, and the total of column (9) shall agree with the total of items 13(b), 30, and 31, and the appropriate amount opposite item 32 of such statement.

SCHEDULE 11—CAPITAL STOCK OF LICENSEE

Furnish in this schedule a complete description of the company's capital stock authorized, capital stock issued and outstanding, and data relating to special transactions involving capital stock.

In column (1) shall be described the type and class of each issue, such as common—$5 par, preferred (7 percent Series of 1967), etc. The par value or, for no-par stock, the stated value shall also be reported in column (1).

The number of shares authorized, whether issued or not, shall be reported in column (2).

The number of shares and amount, at par or stated value, of stock issued and not retired or cancelled shall be reported in columns (3) and (4). The total of column (4) shall agree with item 36 of the Statement of Financial Condition. The number of shares held as treasury stock shall be shown in column (5). Column (6) will represent the difference between column (3) and column (5).

Column (7) shall be the amount at par or stated value representing the number of shares outstanding as shown in column (6). The total of column (8) shall represent the amount of capital stock subscribed at the subscription price and shall agree with item 40 of the Statement of Financial Condition.

In column (9) shall be reported the amount of subscriptions receivable, which shall agree in total with item 40(a) of the Statement of Financial Condition.

Column (10) shall show the number of shares (other than those under option) reserved for purchase by officers and employees, and column (11) shall show the number of shares reserved to cover options and other rights.

SCHEDULE 12—OPTIONS ON LICENSEE'S CAPITAL STOCK

Furnish in this schedule full information concerning outstanding capital stock options which have been granted by the company.

The holder of each option shall be identified in column (1). The number of shares optioned shall be shown in column (2). In column (3) shall be described the type and class of stock called for by the option, such as common—$5 par, preferred (7 percent Series of 1967), etc.

Column (4) shall show the grant and expiration dates of each option and column (5) shall set forth the price or prices at which each option is exercisable, together with the period during which each price applies.

Column (6) shall show the fair market value, per share, of stock called for by each option, at the date the option was granted. The price at which the option is exercisable as a percentage of fair market value, per share, of the optioned stock at date of granting shall be shown in column (7). Column (8) shall set forth the provisions made with respect to each option in the event of the optionee's death or retirement, or other circumstances.

The fair market value, per share, of stock called for at date the option was granted, if not ascertainable on the basis of actual market, shall be as determined by the board of directors.

SCHEDULE 13—OWNERSHIP OF EQUITY SECURITIES OF SBIC

Furnish in this schedule the information as required by the form regarding equity securities issued by the Licensee and regarding the Licensee's officers, directors, and employees.

In column (1) list:

(a) Each person or company directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of the company.

(b) Each person or company owning of record or being known to own beneficially more than 10 percent of any other class of equity securities of the company.

(c) Each officer and director of the SBIC. (List and identify all officers and directors regardless of whether or not they own any equity securities of the company.)

(d) Each employee of the company. (List all employees, including salaried officers and directors, regardless of whether or not they own any equity securities of the company and show whether they are full-time or part-time employees.)

Show in column (2) whether each natural person listed in column (1) is an officer, director, employee, or specific combination of any of the three. Indicate in column (3) the type of business in which each listed person or company is engaged. Column (4) shall show the title of each class of stock owned by any person or company and column (5) shall indicate whether the securities of the specific class are owned both of record and beneficially, of record only, or beneficially only.

In columns (6), (7), and (8), respectively, show the number of shares of each class owned by each listed person or company, the total par or stated value of such shares, and the percentage of the total number of shares of this class outstanding which is represented by the shares owned by the particular person or company.

Summarize the foregoing information by class of equity security at the bottom of the schedule.

SCHEDULE 14—SUNDRY ASSETS

Show and explain in this schedule, by appropriate classification, the amounts of any of the sundry assets which are significant in relation to the amount of total assets. Such assets will consist of: (1) Notes receivable, including notes representing amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities; (2) accounts receivable, including dividends receivable and amounts due on open account from debtors on sale of assets acquired in liquidation; (3) accrued interest receivable; (4) funds in escrow pending closing of financing, and prepayments or deferred charges; (5) unamortized organization costs; and (6) other assets.

Identify each significant item and describe the transaction out of which it arose, giving names of debtors and terms of debt instruments. Provide detailed information on amounts due from directors, officers, and employees, and all amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities. With respect to the latter, identify the asset or assets originally acquired in liquidation to which the amount due relates.

VERIFICATION OF THE FINANCIAL REPORT, SBA FORM 468

The verification of the Financial Report, SBA Form 468, shall bear the signature of the chief financial officer of the Licensee, or other officer authorized by the board of directors to sign in the event the chief financial officer is unavailable. A secretarial officer of the Licensee shall attest by signature to the fact that the minutes of a meeting of the board of directors show that the Financial Report, SBA Form 468, has been reviewed and approved by the board of directors. The date on which each signature is affixed shall be shown. All signatures on all copies of the Financial Report, SBA Form 468, submitted to SBA shall be original signatures in ink.

VERIFICATION OF LICENSEE'S STATEMENT ON IMPLEMENTATION OF PLAN FOR DIVESTITURE OF CONTROL OF SMALL BUSINESS CONCERNS

The verification of the Licensee's statement concerning prospects for divestiture of control, which is required by section 107.901(e) of the regulations to be furnished to SBA in triplicate with the annual financial report (SBA Form 468), shall bear the signature of a secretarial officer of the Licensee attesting to the fact that the minutes of a meeting of the board of directors show that such statement has been reviewed and approved by the board of directors. The date on which such signature is affixed shall be shown. The secretarial officer's signature on all copies of the Licensee's statement concerning prospects for divestiture of control submitted to SBA shall be an original signature in ink.

APPENDIX 3—INSTRUCTIONS FOR PREPARATION OF THE PROGRAM EVALUATION REPORT, SBA FORM 684 (1–68)

Section 107.1102(f) of the regulations governing small business investment companies includes a provision requiring each Licensee to submit a Program Evaluation Report, SBA Form 684, as of March 31 of each year. The report is required to be filed with the Small Business Administration on or before June 30 of the same calendar year. Three executed copies of the report shall be furnished to SBA.

Each such report as of March 31 shall reflect all Licensee financings of small business concerns which were outstanding at any time during the preceding 12-month period.

If the Licensee has engaged in more than one financing of a single small business concern (for example: Two loans made at different times within a year supported by separate financing instruments, or one loan, one debt security with warrants, and one capital stock of SBC) each such financing shall be entered in a separate column of the form. Make the appropriate entry opposite each numbered line for the first such financing, and make entries only on lines 1, 2, and 7 through 16 for other financings of the same small business concern. Multiple disbursements under a single financing agreement to a small business concern are to be treated as one financing, and only one entry shall be made to include all such disbursements to the small business concern.

Except as noted above with respect to more than one financing of a single small business concern, entries shall be made on the report on each line (1 through 37) for each financing outstanding at any time during the 12-month period ended March 31.

In entering financings in which participation by others is a factor, an "initiating" company shall show on lines 12 and 13 its own share only of total funds disbursed and the outstanding balance (net of participations sold), and a Licensee which has purchased a participation shall enter on lines 12 and 13 the amounts represented by its participation. Both the "initiating" company and the "participating" company shall complete all lines (1 through 37) of the report for such financings. A participation is defined as an undivided interest shared with one or more other lenders or investors in a note, debenture, certificate of stock, or other instrument evidencing a loan to, or equity financing of, a small business concern.

Entries on lines 8, 9, 11, and 12, which reflect the terms of the financing, shall show the current terms if they differ from the original provisions of the financing agreement.

SBA 684A (1–68) Previous editions are obsolete.

If the current information, represented by entries on lines 27 through 36, is either impossible to obtain or misleading with respect to small business concerns which (a) have been merged into other companies since the financing, (b) are presently inactive, or (c) are insolvent, the Licensee may write the word "merged," "inactive," or "insolvent," as appropriate, on lines 27 through 36 rather than make detailed entries for these items.

Entries of all dollar amounts shall be rounded to the nearest dollar.

Instructions covering each line of the report are as follows:

A. Entries to be made on each page of the report:

1. Page number, and total number of pages in the report. (Examples: Page 1 of 4 pages, or page 3 of 6 pages.)

2. SBIC license number.

3. Employer identification number. Enter the number assigned to the Licensee by the U.S. Treasury Department. If the Licensee does not have an employer identification number, it shall obtain one by submitting an Application for Employer Identification Number, Form SS–4, to the U.S. Director of Internal Revenue with whom the Licensee's Federal tax and employee withholding returns are filed.

4. Name of Licensee.

5. City, county, and State, in which Licensee's principal office is located, and ZIP code for Licensee's principal office.

B. Entries to be made for each financing outstanding during the 12-month period covered by the report:

Line Nos.

1. *Employer identification number* of the small business concern (SBC) financed. The small business concern will have an employer identification number or must obtain one by filing Form SS–4 with the U.S. Director of Internal Revenue with whom its Federal tax and employee withholding returns are filed.

2. *Name of small business concern* financed.

3. *Address.* Enter the address of small business concern financed, including city, county, and State in which the concern's principal business office is located.

4. *Date business established.* Enter the month and year that the small business concern commenced business in its present form.

5. *Form of business.* Show whether the financed concern is a corporation, partnership, proprietorship, etc.

6. *Type (SIC 4-Digit Code).* Enter the 4-digit Standard Industrial Classification Code of the principal industry in which the small business concern is engaged. Determine the proper code by reference to the Standard Industrial Classification Manual, issued by the Executive Office of the President, Bureau of the Budget.

7. *Type of investment and financing number.* Types of investment include loans, debt securities, capital stock, and stock rights (including warrants or options). If the Licensee has had more than one financing of the same type outstanding with the same small business concern, lines 1 through 16 shall be completed for each of these financings in separate columns of the form. Each such similar financing shall be assigned a financing number for purposes of identification, and this financing number shall be shown on future reports relating to the same financing. Typical entries on this line would be: Loan–1, loan–2, debt security, etc. (If there has been only one financing of a given type for the small business concern, no financing number need be assigned.)

8. *Put and call features (yes or no).* Indicate whether or not the financing agreement includes put and call features by entering "yes" or "no," as applicable.

9. *Interest rate.* Enter the stated interest rate for each loan or debt security investment, as shown in the financing instrument. Enter "N/A" (not applicable) for investments in capital stock and stock rights.

10. *Initial disbursement date.* Enter the date of the first disbursement applicable to the specific financing made to the small business concern.

11. *Maturity (Months).* Enter the number of months from the initial disbursement date to maturity for each loan or debt security

financing. Enter "N/A" for investments in capital stock and stock rights.

12. *Total funds disbursed.* Show the total funds disbursed, including the amount of any discount, fees, and other charges, to the small business concern applicable to each specific financing. If multiple disbursements have been made under a single financing agreement, show the total amount of such disbursements as a single amount.

13. *Unpaid balance at report date.* Enter the principal amount of the unpaid balance of the loan or debt security financing or the cost of the capital stock or stock rights investment, as of the report date.

14. *Use of proceeds (code).* Enter the code number indicating which of the following was the primary purpose of the small business concern in obtaining the financing. In instances in which the small business concern had multiple purposes for obtaining the financing, select the single most important purpose. Enter only one code number for each financing:

(a) Operating capital (Code No. 1).

(b) Plant modernization (Code No. 2).

(c) Acquisition of all or part of an existing business (Code No. 3).

(d) Consolidation of obligations, debt refunding, etc. (Code No. 4).

(e) New building or plant construction (Code No. 5).

(f) Acquisition of machinery and equipment (Code No. 6).

(g) Land acquisition (Code No. 7).

(h) Other (Code No. 8).

If the proceeds were used primarily to improve the financed concern's marketing activities, enter the appropriate code number, followed by the letter "M." If proceeds were used primarily for research and development activities, enter the appropriate code number followed by the letter "R." If neither marketing nor research and development was the primary overall purpose, enter only the appropriate code number, with no following letter.

15. *Secured (yes or no).* Indicate by the word "yes" or "no" whether the financing was fully secured by collateral or guaranty at the time the original disbursement of funds was made. "Fully secured" means that the value of the collateral security for the financing was at least equal to the amount of the financing when made.

16. *Status of financing (code).* Enter the appropriate code number to indicate the current status of the financing:

(a) Repayment or other investment recovery of the full amount of principal and interest or cost of other investment appears to be reasonably assured (Code No. 1).

(b) Repayment or other investment recovery of the full amount of principal and interest or cost of other investment is possible, but not assured pending improvement in the performance of the small business concern financed (Code No. 2).

(c) Repayment or other investment recovery is in jeopardy and some loss is probable (Code No. 3).

(d) The financing has been paid off in full by the financed small business concern or has been disposed of otherwise at cost or at a profit to the Licensee (Code No. 4).

(e) Financing has been liquidated through sale, partial repayment and writeoff, or foreclosure and Licensee has either absorbed a loss on the financing or may absorb a loss in the future when collateral is liquidated (Code No. 5).

(f) The financing instrument was exchanged for another financing instrument of the same small business concern, prior to the reporting date (Code No. 6). NOTE: The new financing instrument should be reflected in entries in another column of the same report.

(g) The financing instrument was exchanged through merger, etc., for a financing instrument of a different business concern, prior to the report date (Code No. 7). NOTE: The new financing instrument carried on the Licensee's books as an asset acquired in liquidation of loans and investments, if considered to be financing of an eligible small business concern, should be reflected in entries in another column of the same report.

C. Entries to be made for each small business concern financed: NOTE: Complete lines 17 through 37 only once for each small business concern financed; leave these lines blank in the columns used to describe other financings of the same small business concern.

17 and 27. *Fiscal year ended immediately prior to financing (date) and latest fiscal year ended (date).* Enter the date of the close of the financed concern's latest fiscal year which ended prior to the initial date of disbursement of funds related to the financing (line 17) and the date of the close of the financed concern's most recently completed fiscal year for which amounts are entered in the current information section of the report (line 27). If current fiscal year information is not available from the small business concern, enter the date of the close of the financed concern's latest fiscal year for which information is available, and enter such information on the appropriate lines of the current information section of the report.

18 and 28. *Number of employees.* Enter the financed small business concern's number of employees at the close of the fiscal years ended on the dates shown in lines 17 and 27, respectively.

19 and 29. *Gross revenue for the year.* Enter the amount of total sales or other gross revenues of the financed small business concern for the fiscal years ended on the dates shown in lines 17 and 27, respectively.

20 and 30. *Profit or (loss) for the year.* Enter the amount of net profit or (loss), before taxes, of the financed small business concern for the fiscal years ended on the dates shown in lines 17 and 27, respectively. In determining profit or (loss) for the year, exclude any tax loss carryovers from previous years.

21 and 31. *Assets: Current.* Enter the total amounts of all assets held by the financed small business concern on the dates shown in lines 17 and 27, respectively, which could be expected under normal circumstances to be realized in cash or its equivalent within a period of 1 year from such dates.

21 and 31. *Assets: Total.* Enter the total amounts of all assets including current assets, but net of valuation reserves, held by the financed small business concern as of the dates shown in lines 17 and 27, respectively.

22 and 32. *Liabilities: Current.* Enter the total amounts of all liabilities of the financed small business concern as of the dates shown in lines 17 and 27, respectively, which were due and payable within 1 year of such dates.

22 and 32. *Liabilities: Total.* Enter the total amounts of all liabilities, including current liabilities, of the financed small business concern as of the dates shown in lines 17 and 27, respectively.

23 and 33. *Net worth (deficit).* Enter the amount of the net worth or (deficit) of the financed small business concern as of the dates shown in lines 17 and 27, respectively.

24 and 34. *Inventories.* Enter the total amount of the inventories of the financed small business concern as of the dates shown in lines 17 and 27, respectively. This entry shall include raw materials and supplies, goods in process of manufacture, finished products and merchandise on hand, and other tangible goods that are sold in the normal course of operations.

25 and 35. *Receivables.* Enter the total amount of the receivables of the financed small business concern as of the dates shown in lines 17 and 27, respectively. These receivables shall include all trade receivables such as trade acceptances, notes receivable, and accounts receivable arising from the sale of goods or services.

26 and 36. *Borrowings: Short-term.* Enter the amount of the portion of the financed small business concern's outstanding borrowings which were due within 1 year from the dates shown in lines 17 and 27, respectively. This entry shall cover fund borrowings of all types, such as bank loans, mortgages, and amounts borrowed from SBICs, etc.

26 and 36. *Borrowings: Long-term.* Enter the amount of the portion of the financed small business concern's outstanding borrowings which were due after 1 year from the dates shown in lines 17 and 27, respectively. This entry shall cover fund borrowings of all types, such as bank loans, mortgages, and amounts borrowed from SBICs, etc.

37. *SBC discontinuances (code).* If the financed small business concern has discontinued business during the period covered by the report, enter the code number designating the reason for its discontinuance. If the concern has not discontinued business, enter "N/A" (not applicable). Enter only one code or "N/A," for each financing. Discontinuance codes are:

(a) Insolvency and/or bankruptcy (Code No. 1).

(b) Merger with, or sale to, another business concern, the resulting firm being eligible for further SBIC financing (Code No. 2).

(c) Merger with, or sale to, another business concern, the resulting firm not being eligible for further SBIC financing (Code No. 3).

(d) Voluntary liquidation, for reasons such as retirement of the concern's principal (Code No. 4).

(e) Involuntary liquidation, for reasons other than insolvency, such as fire, death of a principal, condemnation of business location (Code No. 5).

(f) Other causes (Code No. 6).

D. Verification.

1. The chief financial officer of the Licensee shall sign in ink the verification section on the last page of each copy of the report submitted to SBA. The date on which the report is signed and the title of the signer shall be entered in the spaces provided.

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